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THE MOTOR VEHICLE ACT AND THE HIGHWAY TRAVEL ACT

ANNOTATED BY
HIS HONOUR JUDGE WIDDIFIELD
AUTHOR OF
THE LAW OF COSTS IN CANADA
SURROGATE COURT PRACTICE EXECUTORS' ACCOUNTS

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THE CARSWELL COMPANY LIMITED
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PREFACE

The enormous increase of litigation growing out of motor vehicle traffic during the past few years is sufficient excuse for an annotation of The Motor Vehicle Act. Some of the provisions of The Highway Travel Act are so interwoven with The Motor Vehicle Act that, in considering the one, constant reference has to be made to the other.

No attempt has been made to encompass here all the law relating to motor vehicles, but I have endeavored to collect all the Canadian, and many of the leading American, authorities explanatory of The Motor Vehicle Act.

My thanks are due to Arthur F. Curtis, Esq., the editor of the last edition of Huddy on Automobiles, and to the publishers thereof, for their kind permission to make use of that encyclopedia of automobile law.

C. H. W.

Toronto, November, 1920.

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MOTOR VEHICLES

AN ACT TO REGULATE THE SPEED AND OPERATION OF MOTOR VEHICLES ON HIGHWAYS.

R. S. O. 1914, c. 207. Amended by 4 Geo. V., c. 36; 6 Geo. V., c. 47; 7 Geo. V., c. 49; 8 Geo. V., c. 37; and 9 Geo. V., c. 57.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Motor Vehicles Act*. 2 Geo. V., c. 48, s. 1.

The first legislation to regulate the speed and operation of motor vehicles on the highways was 6 Edw. VII., c. 46 (1906). This Act was amended in 1909, and consolidated by 2 Geo. V., c. 48, as The Motor Vehicles Act, and further amended and consolidated as it now appears in R. S. O. 1914, c. 207. Amendments have been made at each session of the Legislature since the last consolidation, and these are included in the text. These amendments follow in the form of the compilation of the Deputy Minister of Highways, prepared pursuant to section 22 of the Act, which, as he points out, are not to be considered as consolidated by statutory authority.

A province has the power under section 92 of the British North America Act, to regulate the use of motor vehicles upon the highways of the province, and in so doing does not trench upon the criminal law. The highways are "local works and undertakings" within the meaning of section 92 (10), assigned exclusively to the provincial legislatures, and do not come within any of the class of subjects enumerated in section 9 as assigned to the Parliament of Canada: *Re Rogers* (P.E.I.), 7 E. L. R. 212.

The Act is passed to insure the safety and protection of persons riding or driving upon the highways, and gives a right of action to any such person who is injured by reason of the non-observance of the requirements of the statute: *Stewart* v. *Steele,* 6 D. L. R. 1. But the non-observance of the statute must be the proximate cause of the injury: See *Godfrey* v. *Cooper,* under section 4.

INTERPRETATION.

2. In this Act,

(*a*) "Highway" shall include public park, parkway and driveway;

(*b*) "Motor Vehicle" shall include automobile, locomobile, motor bicycle and any other vehicle propelled or driven otherwise than by muscular power; but shall not include the cars of electric or steam railways, or other motor vehicles running only upon rails or a traction engine within the meaning of The Traction Engines Act;

(*c*) "Peace Officer" shall include a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, justice of the peace, gaoler or keeper of a prison, and a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process. 2 Geo. V., c. 43, s. 2.

The term "highway" is a generic term for all kinds of public ways, including county and township roads, streets and alleys, turnpikes and plank roads. In short every public thoroughfare is a highway. It embraces every kind of public way common to all citizens, whether a footway, horseway, cartway, or a way by water: *Heyward* v. *Chisholm,* 11 Rich. Law, 253, 263.

A public highway as distinguished from a private road, is one open to the travel of the public. It is the right to

travel upon it by all the world, and not the exercise of the right, which makes it a public highway: *In re City of New York,* 135 N. Y. 253.

A highway is a piece of land over which all members of the public are entitled to pass and repass; and, conversely, every piece of land which is subject to such public right of passage is a highway or a part of a highway: *Rideout* v. *Howlett,* 12 E. L. R. 527.

Though every public thoroughfare is a highway, it is not essential that every highway should be a thoroughfare. A road which leads only to the residence of a single individual may be a highway: *Southern Ry. Co.* v. *Coombs,* 124 Ga. 1004.

The defendant drove his motor car into a school yard and around the school building to where the plaintiff was working with his team—the team became frightened and ran away. It was held the school yard was not a highway: *Collyer* v. *McAuley* (1918), 46 D. L. R. 140.

A "public park" in the popularly accepted meaning of the present time, may be comprehensively defined as a public pleasure ground. The definitions of the lexicographers do not vary much from this. No doubt the idea of open air and space, with the land kept in grass and trees, as if approximately in the state of nature, still adheres in the natural understanding of the word, but it is no longer the dominating thought, as it formerly was. Public parks are recognized as the natural place for walks, drives a-wheel or with horse and carriage: *Laird* v. *City of Pittsburg,* 205 Pa. 1.

A municipal "parkway" is a street of special width which is given a park-like appearance by planting its sides or centre, or both, with grass, shade trees and flowers. It is intended for recreation and for street purposes. In short, a parkway is essentially a boulevard, giving to the term its modern meaning: *Kleopfert* v. *City of Minneapolis,* 90 Minn. 158.

The Standard Dictionary defines "driveway" to be "a road for driving," and that is the meaning that at once suggests itself. It doubtless implies that it is over private lands, and is not a public way, but it does not imply that it is exclusive: *Young* v. *Bramin,* 105 Me. 494.

"Motor vehicle": Denotes a vehicle moved by inanimate power of any description, generated or stored within it, and intended for the transportation of either goods or persons on common highways: Americana. An automobile cannot be classed as "household effects" under a tariff law: *Hillhouse*

v. *United States,* 152 Fed. 163. "An automobile is not a work of art, nor a machine about which there can be any very peculiar fancy or taste, but it is not a common gross thing, like a road wagon or a cart": *Walker* v. *Bront,* 124 Mo. App. 628.

A bicycle is a two-wheeled velocipede: An apparatus or vehicle consisting of two wheels, one before and one behind, Imp. Dict. A two-wheeled vehicle having a tandem arrangement of the wheels: Standard Dict.

"Motor bicycle": In the legislation of the American States the term used is "motor cycle"; and, if the intention was to include machines with more than two wheels, this is the more appropriate phraseology.

"A motor cycle is a two-wheeled, or sometimes three or four-wheeled cycle, driven by a motor, and usually furnished with pedals. The motor drives the wheel by belt, chain or propeller shaft, or even directly by spur wheels, and is usually started by the pedals or by a crank. There is usually but one speed, but sometimes two or three. Motor cycles carry but one person, the driver, although some makes produce arrangements for carrying another by an auxiliary framing, or in a forward seat, converting the motor cycle into a tricycle: When furnished with four wheels it becomes a quadricycle or quad." Int. "Motor," Cyc. 326.

Having regard to the primary purpose of the Legislature to protect pedestrians and others on the highways, the American courts seem inclined to hold that a motor cycle is a motor vehicle apart from statutory interpretation: See *Bonds* v. *State,* 85 S. E. 29. And in England the term "motor car" includes a motor bicycle: *Webster* v. *Perry* (1914), 1 K. B. 51.

"Peace officer": A railway constable on a Dominion railway is a peace officer within the railway limits prescribed in section 450 of the Railway Act, Canada, although acting in another province than the one in which he was appointed: *Rex* v. *O'Brien,* 32 Can. C. C. 46.

REGISTRATION AND PERMITS.

3.—(1) The owner of every motor vehicle driven on a highway shall pay to the Minister of Public Works and Highways a registration fee for such motor vehicle. 6 Geo. V. c. 47, s. 3.

(2) The Minister of Public Works and Highways shall issue, for each motor vehicle so registered, a numbered permit stating that such motor vehicle is registered in accordance with this Act, and shall cause the name of such owner, his address and the number of his permit, to be entered in a book to be kept for such purpose. 6 Geo. V., c. 47, s. 3.

(3) The Lieutenant-Governor in Council may make regulations regarding renewals and transfers of such permits, the payment of fees therefor, the amount and time of payment of such fees, and the registration and operation of motor vehicles owned by manufacturers or dealers and not kept by them for private use. 2 Geo. V., c. 48, s. 3.

(4) The Lieutenant-Governor in Council may make regulations—

(*a*) For the appointment of permanent, special or temporary constables, servants or officers for enforcing or carrying out the provisions of this Act or of any regulations made thereunder;

(*b*) For defining the duties and powers of and for fixing the salaries, allowances and expenses to be paid to such constables, servants or officers.

(5) Such salaries, allowances and expenses for the purposes mentioned in subsection (4) shall be payable out of any sum appropriated by this Legislature for the purposes mentioned in subsection (4). 3-4 Geo. V., c. 52, s. 1.

(6) Declarations or affidavits in connection with the issuance of permits and licenses under this Act or required by the regulations of the Department of Public Highways in that regard, may be taken before any person having authority to administer oaths or before any person specially authorized for that purpose by the Lieutenant-Governor in Council,

but any person so specially authorized shall not charge any fee therefor. 6 Geo. V., c. 47, s. 4.

(7) The Minister may give authority to any person to issue permits for motor vehicles and may define the duties and powers of such officers, and, where the salary is not otherwise provided, may authorize and fix the fee to be retained by the person so authorized for each permit issued. 7 Geo. V., c. 49, s. 2.

This section does not apply to a motor vehicle owned by a person not resident in Ontario: See section 10.

Where an automobile is not registered in accordance with the statutory requirements, the owner cannot lawfully operate it upon the highway, nor can he legally authorize or permit a third person so to do, and he is liable for the consequences of the negligent operation of such a vehicle by one whom he has permitted to use it whether the latter is acting within the scope of his employment or is using the car in connection with his own business: Huddy, 151.

Under a statute requiring the owner of an automobile to file in the office of the Secretary of State a statement of his name and address, together with a brief description of every such vehicle owned by him, and requiring him to obtain from such official a numbered certificate which shall contain the name of the owner of such vehicle and that he has registered it in accordance with the law, the certificate so issued is *prima facie* evidence of ownership, and is sufficient to sustain a verdict against a person for injuries caused by the automobile unless contradicted by competent evidence: *Delano* v. *Bounty*, 62 Wash. 595.

One of the purposes of a license to drive a motor car issued under the Motor Car Act is the identification of the person to whom it is issued, and the production thereof, on due demand, to a constable, constitutes *prima facie* evidence that the particulars it contains refer to the person producing it, and that he is the person to whom it was issued. Secondary evidence of such particulars may be given although no notice to produce the license at the hearing has been given: *Martin* v. *White* (1910), 1 K. B. 665.

A by-law placing further restrictions on the operation of motor vehicles for hire within a city will not be effective to

control an unqualified license already held by the accused: *Rex* v. *Atcheson,* 9 O. W. N. 65; 25 Can. C. C. 36.

Under the English Motor Car Act, 1903, a right to use a general identification mark is assigned for one year, on the registration of the car; and it is no defence to a charge of using a car on a public highway without being registered, that no notice was given to the accused of the expiration of the right: *Caldwell* v. *Hague,* 84 L. J. K. B. 543.

Motor cycle manufacturers had had a general identification mark assigned to them, which was affixed to one of their motor cycles. One of their employees, without their authority, took the motor cycle to his home, and left it there for some days, while he was away on his holiday. In his absenee, his brother, without knowledge of the owners, took out the cycle and used it without the mark on it. The Court held that, as the motor cycle was used without the knowledge or authority of the owners, they had not violated the regulation requiring manufacturers or dealers to keep a record of the distinguishing number, placed on or annexed to the identification plates, and of the name and address of the driver: *Phelan* v. *Moore* (1914), 3 K. B. 165.

The registration fee on motor vehicles is governed by the horse-power. The horse-power is determined by Regulation 6: See Appendix. A statute making the license duty payable in respect of motor cars, depending on the "horse-power" of their engines, to be calculated in accordance with the regulations made for the purpose, does not refer to the true horse-power as the basis of the scale of duties, but to a horse-power calculated according to the regulations: *London County Council* v. *Turner,* 105 L. T. 380; 22 Cox C. C. 593.

A regulation limiting the weight of a registered heavy motor car has reference only to the weight of the motor vehicle, and has no application to the weight of the trailer attached to it: *Pilgrim* v. *Simmonds,* 105 L. T. 241.

Affidavits may be sworn before a Judge of any court, a Notary Public, Justice of the Peace, or Commissioner for taking affidavits, having authority or jurisdiction in the place where the oath is administered: Section 23, Interpretation Act, Ontario.

The regulations made by the Lieutenant-Governor-in-Council will be found in the Appendix.

A certificate of registration issued to dealers (see Regulation 5), does not confer a general and unlimited license,

but only for the restricted uses named. When a car so registered is being used solely for pleasure, it is an unregistered car: *Cobb* v. *Cumberland Co. P. & L. Co.*, 117 Me. 455.

NOTICE OF CHANGE OF ADDRESS.

3*a*. Where an owner changes his address, as given under subsection (2) of section 3 he shall forthwith send by registered letter or cause to be filed in the Department of Public Highways his change of address, and every subsequent change of address and on failure to do so shall incur a penalty not exceeding $10. 8 Geo. V., c. 37, s. 2.

LICENSES WHERE DRIVING FOR HIRE.

4.—(1) No person shall, for hire, pay or gain, drive a motor vehicle on a highway unless he is licensed to do so, and no person shall employ anyone so to drive a motor vehicle who is not so licensed.

(2) The license for such purpose may be issued by the Minister of Public Works and Highways to such person for such time and upon such terms and subject to such regulations and restrictions as the Lieutenant-Governor in Council may prescribe. 2 Geo. V., c. 48, s. 4; 6 Geo. V., c. 47, s. 3.

(3) A license shall not be issued to a person who drives a motor vehicle for hire, pay or gain unless he files in the office of the Minister of Public Works and Highways, certificates that he is a fit and proper person to be so licensed, having regard to his character, physical fitness, ability to drive and knowledge of the rules of the road. One of such certificates touching the applicant's character shall be furnished by the chief constable of the municipality in which the applicant resides, and one other certificate touching the applicant's physical fitness, ability to drive and knowledge of the rules of the road shall be furnished by a member of the Ontario Motor League appointed for that purpose by the Lieutenant-Governor in Council and residing in the muni-

cipality in which the applicant resides. 6 Geo. V., c. 47, ss. 3 and 5 (1); 9 Geo. V., c. 57, s. 1.

(4) If there is not one appointed member residing in the municipality the certificate may be signed by one such appointed member residing in the municipality nearest to that in which the applicant resides. 6 Geo. V., c. 47, s. 5 (2).

"Hire" is a reward or compensation paid for the possession or use of personalty: *Learned* v. *Fowler,* 19 So. Rep. 396.

"Gain" is not necessarily limited to pecuniary gain: *Re Arthur Average Assn.,* 44 L. J. Ch. 572.

An Act imposed a penalty on any person who worked or navigated any boat within certain limits for "hire or gain." The appellant's employers wanted to send some men from their wharf to a ship lying in the river, and as the appellant was able to scull he was ordered to take the men in one of the employers' boats. For doing this he was convicted, but the conviction was set aside. Here the appellant was not employed to work the boat for hire or gain, his wages being paid him in respect of an entirely different employment: *Skittrell* v. *Showell* (1889), 61 L. T. 874.

An Act prohibited any carriage plying for hire without a license. Two omnibuses were run in the following way: It was announced by notices upon the omnibuses that they were placed at the disposal of the public free of charge, but that voluntary contributions to support the omnibuses would be welcomed. Many persons using the omnibuses placed money in the boxes, but some did not. It was held this was an attempt to evade the statute, and that there was a "plying for hire": *Cocker* v. *Mayner* (1893), 70 L. T. 403.

By section 29 a person violating the provisions of this section is liable to a penalty not exceeding $10 for the first offence, not exceeding $20 for the second offence, not exceeding $30 for the third offence, and not exceeding $50 for any subsequent offence. By section 34 the penalty is recoverable under the Summary Convictions Act. Under these provisions a Police Magistrate has jurisdiction to hear and determine a charge: *Rex* v. *McCord* (1919), 17 O. W. N. 143. And see sections 25 and 26.

The Saskatchewan Act provides: "No motor vehicle shall be used or operated upon any public highway, which

shall not have been registered under this Act, or which shall not display thereon the number plate as prescribed by this Act." The plaintiff's car was injured by reason of an obstruction in the highway, but at the time of the accident he had no number plate on his car. The Court said: "Under the circumstances, the plaintiff was distinctly prohibited from operating his car at the time of the accident. He was, therefore, operating it illegally, and the defendants owed him no other duty than not to wilfully or maliciously injure him. See *Constant* v. *Pigott*, 15 D. L. R. 358, also *Greig* v. *Merritt*, 11 D. L. R. 852": *Etter* v. *City of Saskatoon* (1917), 39 D. L. R. 1.

Greig v. *Merritt* was a decision of the trial Judge under the British Columbia statute, which is the same as the Saskatchewan statute. *Constant* v. *Pigott* is a judgment of the Manitoba Court of Appeal. The action was against a cab owner by a person driving an unlicensed automobile. The note of the case is: "The Court dismissed the appeal, as no wilful or malicious injury was shewn, and the plaintiff could not otherwise recover because the automobile was not licensed under the Motor Vehicles Act."

The plaintiff's motor truck, more than 90 inches wide, broke through a bridge. In an action against the municipality the plaintiff failed. Section 6 of the Load of Vehicles Act provides: "No vehicle shall have a greater width than 90 inches." Riddell, J., referred to *Etter* v. *City of Saskatoon*, and said: "The plaintiff had no right to have such a vehicle on the highway at all, and in respect thereof he was a mere trespasser. The corporation owed him no duty, except to refrain from setting traps for him and from maliciously or wilfully injuring him, and he must take the road as he finds it": *Sercombe* v. *Township of Vaughan* (1919), 45 O. L. R. 142.

In *Buck* v. *Eaton* (1919), 17 O. W. N. 191, the plaintiffs recovered a judgment at the trial for injuries sustained by reason of a collision between their motor cycle and the defendant's automobile. On appeal, Meredith, C.J.C.P., said the defendants seemed to be in fault in two respects, "but the plaintiffs could not take advantage of the defendants' two faults, because the plaintiff Herbert was, at the time of the accident, unlawfully driving the motor cycle—driving it in plain violation of a plain provision contained in the Motor Vehicles Act." The learned Chief Justice seems to have

further held that the plaintiffs could not succeed on the ground of contributory negligence. Riddell, J., said it was argued that the plaintiff Herbert, being between 16 and 18 years of age, and having no license, was a trespasser upon the highway, and therefore his rights were limited as stated in *Sercombe* v. *Township of Vaughan* and similar cases. The note of the report concludes: "An attentive perusal of the cases convinced the learned Judge (Riddell, J.), that the rider of the motor cycle was guilty of negligence disentitling him to recover; and, in that view, the legal point need not be considered." Middleton and Latchford, JJ., agreed with Riddell, J.

The last word on the subject, where the matter came squarely before the Appellate Division, and where the *Sercombe and Vaughan* case was distinguished, is *Godfrey* v. *Cooper* (1920), 46 O. L. R. 565. The plaintiffs were passengers for hire in a "jitney" driven by F., and owned by his wife. F. was not licensed to drive a car for hire as required by this section. In a collision case the trial Judge found the drivers of both cars negligent, but gave judgment for the plaintiffs on the ground that they were not so identified with F. as to be answerable for his contributory negligence. Riddell, J., said: "I do not discuss the question as to the right of the 'jitney' on the highway. I assume that it was wrongfully there—one question then is, what is the duty of one lawfully travelling upon the highway towards one unlawfully travelling upon the same highway? The answer is in my view plain. In the first place it has little or nothing in common with the duty of the owner of property toward those who come upon it; and such cases as *Sercombe* v. *Township of Vaughan*, 45 O. L. R. 142, do not assist it. We have two persons, members of the public, using a highway intended for public use; is one of them to gauge his conduct toward the other by the fact that that other has or has not a license? Are his duties to that other to be tested by something of which the first might, and probably would, be ignorant?"

Middleton, J., said: "The contention is that Flemming in driving the car was unlawfully upon the highway, and the passengers, by participating in his illegal act, became unlawfully upon the highway, and the negligence of the defendant resulting in their injury affords them no right of action.

"I disagree with every element of this contention. In my opinion, a mere failure to obtain a license does not

deprive the driver of any right of action he would otherwise have against any person who injures him by negligence. Nor can a defendant rely upon any breach of the provisions of the statute unless he can shew that the breach of the statute was a proximate cause of the accident. Nor can any such defence avail against a passenger in the car. He is not so identified with the driver as to be disentitled to recover by the fault of the driver. The question is very widely different from that which arises in an action against a municipality for damages by reason of the non-repair of a highway. There there is no wrongful act resulting in injury, but a mere failure to perform a statutory duty; and, before a plaintiff can succeed he must shew that the defendant owed a duty to him, and he fails in this when it appears that by reason of some fact he is not lawfully upon the highway. The obligation to repair a highway is an obligation to those lawfully upon the highway. An example of the application of this principle is found in *Sercombe* v. *Township of Vaughan.*" Latchford, J., agreed with Middleton, J.

In this case the majority of the Court repudiate the doctrine that obtains in Massachusetts, and one or two other States, that the unregistered automobile is an outlaw, and its operation upon the highway deemed to be unlawful in every feature and aspect of it. In Massachusetts the effect of the lack of registration is supposed to flow from the provisions of the statute, which is said to place the unregistered vehicle and its occupants in the position of trespassers, with the same right which a trespasser upon land has against the owner of the land. This effect is attributed to the provision of the statute that no automobile shall be operated on the streets unless registered. Our statute, on the contrary, indicates that it is intended to require those operating motor vehicles upon the highway to observe its requirements, and failure to do so subjects the offender to the penalties set out in the statute, but does not make him a trespasser in the same sense that he is an "outlaw" within the meaning of the the Massachusetts cases.

PENALTY FOR FALSE STATEMENT.

4*a*. Any person who knowingly makes any false statement of fact in any application, declaration, affidavit or paper writing required by this Act or by

the regulations in order to procure the issue to him of a license, permit or certificate of registration shall in addition to any other penalty or punishment to which he may be liable incur a penalty not exceeding $50. 8 Geo. V., c. 37, s. 3.

A person may be guilty under this section although the offence does not amount to perjury, as it is not essential that the statement of fact be sworn to. The statement must, however, be false to the knowledge of the accused. "Knowingly," means with knowledge, conscientiously, intelligently. The use of this word in an information or indictment is equivalent to an averment that the defendant knew what he was about to do, and, with such knowledge, proceeded to do the act charged: *U. S.* v. *Claypool,* 14 Fed. 128.

When an offence consists of "knowingly" violating the provisions of a statute, the omission of the word "knowingly" from both the information and conviction is a matter of substance and not a mere matter of form, and the defect is not curable upon *certiorari* as an "irregularity, informality or insufficiency" under section 1124 of the Criminal Code: *R.* v. *Hayes* (1903), 5 O. L. R. 198; 6 Can. C. C. 357. And see *R.* v. *Beaver* (1905), 9 O. L. R. 418.

PRODUCTION OF LICENSE.

5. A license must be produced by any person driving a motor vehicle for hire, pay or gain when demanded by a peace officer. 2 Geo. V., c. 48, s. 5.

For definition of "peace officer," see section 2 (*c*).

Under the Quebec statute the chauffeur or person operating an automobile is required, under penalty, to be able to produce his license or certificate of registration, whenever required to do so by the proper authorities; the fact that he does not have it upon his person is no defence: *Lebel* v. *Blier,* 51 Que. S. C. 246.

The production of a license to drive a motor car to a constable is *prima facie* evidence that it was issued to the person producing it, and that the particulars contained in it refer to him: *Martin* v. *White* (1910), 1 K. B. 665.

HORN AND LIGHTS.

6.—(1) Every motor vehicle shall be equipped with an alarm bell, gong or horn, and the same shall be sounded whenever it shall be reasonably necessary to notify pedestrians or others of its approach.

(1*a*) Every motor vehicle shall be equipped with a noise muffler, and no contrivance for releasing such muffler shall be attached to the motor vehicle so that it may be operated from any seat in the vehicle;

(1*b*) Every motor vehicle used for commercial purposes shall be equipped with a mirror securely attached to it and placed in such a position as to afford the driver of such motor vehicle, while driving or operating the vehicle, a clear view of the roadway in the rear or of any vehicle approaching from the rear. 9 Geo. V., c. 57, s. 2.

(2) Whenever on a highway after dusk and before dawn, every motor vehicle shall carry three lighted lamps in a conspicuous position, one on each side of the front and one on the back of the vehicle except in the case of a motor bicycle without a side car, which shall carry one lamp on the front and one on the back of the vehicle. Any lamp so used shall be clearly visible at a distance of at least two hundred feet. 2 Geo. V., c. 48, s. 6; 4 Geo. V., c. 36, s. 2; 7 Geo. V., c. 49, s. 3; 8 Geo. V., c. 37, s. 4.

Warning—Horn: Reasonable care requires that, at street crossings and other places where travellers may naturally be anticipated, a warning of the approach of a motor vehicle shall be given by its driver. If the driver fails to give a proper warning and injury is thereby occasioned to another, that may be negligence. To a certain extent travellers are entitled to rely on the belief that the drivers of motor vehicles will give them a proper warning: *Toronto General Trusts Corporation* v. *Dunn* (1911), 20 Man. R. 417. That was an action for damages by the administrator of one McKay, who, when walking across a public street at night was killed by being run over by an automobile driven by the defendant.

The car was equipped with acetylene lamps and oil lamps. The oil lamps alone were burning, but these were not strong, nor such as to attract attention. If they were sufficient to comply with the statute they were nothing more. At the street-crossing where the accident happened, the path was shaded by trees. Robson, J., who tried the action, said: "It is contended by the defence that McKay was guilty of negligence. It was said that had he looked to the east he would have seen the approaching machine and avoided the accident.

"The defendant's counsel relied upon a number of authorities such as *Cotton* v. *Wood,* 8 C. B. N. S. 568, in which the Court of Common Pleas held that it is equally the duty of foot passengers when crossing a street to look for vehicles as it is the duty of a driver of vehicles to look out for foot passengers. But the introduction into street traffic of the automobile, combining speed with great weight and size, has brought about new considerations. The Legislature has deemed it necessary to interfere for the protection of pedestrians and vehicular traffic of other kinds. Hence the Motor Vehicles Act already referred to.

"Without implying that a pedestrian crossing a highway is bound to beware of danger as he would were he crossing a railway, the principle that persons lawfully using a highway are entitled to rely on warnings required by statute, as for instance from railway engines, may well be applied here. See for this principle: *Vallee* v. *G. T. R.,* 10 O. L. R. 224; *Pedlar* v. *Can. Northern Ry.,* 18 Man. R. 525.

"I consider applicable here a rule laid down in a Massachusetts case, arising from an automobile case as follows: 'The usual rule of ordinary care does not impose upon travellers the burden of being constantly on the lookout to see if their path is free from dangerous defects or in a state of apprehension of personal injury from other travellers. The traveller not only has a right to presume that the way is reasonably fitted for his use, but also that those who may be lawfully using it with himself will exercise a proper degree of care': *Hennessey* v. *Taylor,* 76 N. E. Rep. 224. See also notes to *House* v. *Cramer,* 13 Am. & Eng. Dig. Cases 461." The judgment was sustained on appeal.

The failure to give the proper warning may of itself, under some circumstances, constitute negligent conduct. The driver cannot proceed along a public highway by giving a warning of his approach, but not slacking his speed or taking other

steps to avoid collisions with other travellers. The requirement of due warning is intended for the protection of other travellers who might pass in front of the machine in the absence of some signal or knowledge of the approach of a vehicle. When a pedestrian suddenly darts in front of an automobile from a place where pedestrians would not naturally be expected, and is so near the machine that the driver is unable with due diligence to avoid a collision, the injury is deemed the result of an unavoidable accident, and liability is not imposed because the driver failed to blow his horn or give notice of his approach. But at street crossings, the driver is bound to anticipate that pedestrians may be attempting to cross the street, and he must be prepared at such places to give reasonable warning of danger. After passing over a crossing, and while proceeding along a street, if there are no vehicles in the street or pedestrians who are apparently coming in a place of danger, the driver of an automobile is under no duty to sound his horn. In proving a negative fact, such as the absence of a proper warning, evidence to the effect that witnesses did not hear a warning, is proper and may constitute sufficient evidence to present a question for the jury. The weight of negative evidence may be a question for the jury. Huddy, 405, 406.

When travelling at night the lights on the automobile will not be considered a sufficient warning under some statutes, but the driver of the machine must also sound his horn as a signal to other travellers: *Johnston* v. *Cornelius* (Mich.), 166 N. W. 983.

One approaching a busy street corner is not relieved from the duty of giving a proper warning because he has given a signal when passing a vehicle a hundred feet or so from the corner: *Mitchell* v. *Brown* (Mo. App.), 190 S. W. 354.

The driver of an automobile will be liable for injuries sustained by a pedestrian, where the machine makes a sudden turn without warning: *O'Dowd* v. *Newnham,* 13 Ga. App. 220. And when one standing several feet back of a stationary automobile is injured by the sudden backing of the machine without warning, the jury is justified in finding negligence against the driver: *Estrom* v. *Neumogen,* 126 N. Y. Supp. 660.

A driver backing a motor vehicle from a garage to the street should give warning of his approach: *Texas Motor Co.* v. *Buffington,* 203 S. W. 1013.

Where two motor vehicles are approaching at right angles toward a street intersection, and neither gives any warning, they may be equally guilty of negligence: *Corning* v. *Maynard,* 166 N. W. 564; *Larsh* v. *Strasser,* 168 N. W. 142.

The failure of the driver of an automobile to sound his horn when approaching the crossing of an electric railroad does not necessarily convict him of contributory negligence, but such failure is to be considered by the jury with the other surrounding circumstances in determining whether he exercised proper precautions: *Louisville Ry. Co.* v. *Morgan,* 174 Ky. 633.

M. was engaged with a team of horses and a wagon unloading gravel upon a highway. The horses were standing still and M. was within the traces with his back to the nigh horse. While he was in that position, the defendant approached with his automobile from behind. He did not sound his horn because he thought it might frighten the horses, but stopped his car and called out "Hello!" Something startled the horses, they bolted and M. was killed. On appeal, Garrow, J.A., said: "Altogether, it seems to me, with deference, that too much was made of the circumstance that the horn was not sounded. . . . The object of sounding the horn as described in the statute is to give warning to pedestrians 'and others' of the approach of the motor. There is no absolute command that it shall be sounded, or that it shall be sounded at any particular distance; and, if a reasonable warning is otherwise given, the mere failure to sound the horn would not, I think, be an offence. Nor can any one do more than guess at what the consequences would have been if it had been sounded; in other words, it is, from its nature, not a decisive circumstance, and therefore not vital. What, for instance, would have been the position if it had been sounded, as the first answer suggests, and had not been heard by Marshall, a not improbable event? Would sounding it have justified the defendant in advancing, as he did; or would the injury in that event have been as much an injury 'caused by reason of a motor vehicle on the highway,' in the language of section 18 (now 23), as if the horn had not been sounded? I can see no difference": *Marshall* v. *Gowans* (1911), 24 O. L. R. 522.

The defendant while driving his automobile on a city street collided with and injured the plaintiff, who had

alighted from a street car in front of the automobile. The defendant had omitted to sound his horn as required by the Saskatchewan Act. Held, that the rule that it is equally the duty of pedestrians crossing a street to look out for vehicles as it is the duty of the driver to look out for pedestrians, does not apply to the case of an automobile, and a pedestrian lawfully using the highway is entitled to rely upon warnings required by statute to be given by automobile drivers. The driver, therefore, in failing to sound his horn was guilty of negligence, and as such negligence was the cause of the accident it was immaterial that the plaintiff may have been guilty of contributory negligence in failing to look for traffic: *Coe* v. *Mayberry* (1918), 11 Sask. R. 425.

See also *Bell* v. *Johnston* (1917), 25 B. C. R. 82, as to the duty of drivers to sound horns at intersections.

Failure to provide a motor vehicle with a proper horn is negligence: *Dussault* v. *Chartrand,* 54 Que. S. C. 488. And the owner may be convicted of aiding and abetting an offence if he sends his car out without a horn: *Provincial Motor Co.* v. *Dunning* (1909), 2 K. B. 599.

A provision in a motor vehicle Act requiring every motor vehicle to be equipped with a suitable bell, horn or other signal device, by implication requires the use of such signals on proper occasions: *Forgy* v. *Rutledge,* 167 Ky. 182.

When the driver of an automobile sees that one ahead does not hear his horn he should slow down and, if necessary, stop: *Furtado* v. *Bird,* 146 Pac. 58. But failure to sound the horn is not negligence towards one who sees the car approaching: *Van Dyke* v. *Johnson,* 82 Mich. 377; and the omission to sound the horn in passing a horse is not evidence of negligence where it is not contended that the plaintiff relied on such a signal and was misled by it not being given, and it cannot be said that the omission to sound it was in any way the cause of the accident: *Sullivan* v. *Smith,* 123 Md. 546.

The driver of an automobile, well acquainted with conditions, who at the rush hour in the evening, without sounding his horn, drove his car into a narrow space between the curb and a trolley car standing to discharge and take on passengers, was held guilty of negligence: "The defendant says that he stopped at the rear end of the north-bound car and waited until the conductor had closed the rear door and given signals to go ahead. But he did not wait until the

car moved ahead, nor until the passengers were out of the way": *Sternfield* v. *Willison,* 161 N. Y. Supp. 472.

"I think that the idea does prevail among some motor drivers that if they blow their horn they are justified in going on at any rate of speed, and that people are bound to get out of the way. This practice was not universal, but it does to a large extent prevail": Per Lord Alverstone, C.J., *Troughton* v. *Manning* (1905), 92 L. T. R. 855.

The Motor Traffic Regulation Act of British Columbia provides that "every motor shall be equipped with an alarm bell, gong or horn, and the same shall be sounded whenever it shall be reasonably necessary to notify pedestrians and others of the approach of such motor." The Court of Appeal held that the plaintiff cannot stop upon proving that it was reasonably necessary under the circumstances that the horn should have been sounded, but must produce evidence that it was not sounded. Galliher, J.A., said: "I do not think it is a correct statement to say that when a statute imposes a duty a breach of which would constitute negligence, that when the circumstances are such that (as in this case), it was reasonably necessary that the horn should be sounded, the plaintiff can stop there, and it is incumbent on the defendant to shew that the horn was sounded. I think the plaintiff must go further and adduce evidence": *Holmes* v. *Kirk & Co.* (1920), 53 D. L. R. 53.

An accident occurred as the defendant was turning from a town street to enter a yard. Rose, J., said: "A by-law of the town required visible or audible warning to be given by the driver of the car before he made the turn into the yard. Warning would be necessary even without the by-law": *Nugent* v. *Gunn* (1919), 16 O. W. N. 145, affirmed 17 O. W. N. 53.

Lights. Apart from statutory provision it is not negligence *per se* not to have a light on a vehicle when upon a highway. "Generally speaking, at common law, the driver of a wagon upon a highway at night is under no duty to carry a light to warn others of the presence of his vehicle or its load. If he stops in the highway, the circumstances may doubtless be such as to make it negligence if he fail to warn other travellers of the obstruction thus occasioned. But whether such failure can be said to be negligence, must, of necessity, depend upon the circumstances": *Roper* v. *Greenspon,* 192 S. W. 149.

But when a light is required by a statutory regulation, a different question is presented; and, if the omission of duty is one of the contributing causes to a collision with another vehicle, the driver of the motor vehicle may be charged with negligence. The requirement of a light is for the protection, not only of the immediate vehicle, but also of other vehicles with which it might come into collision. Of course, the absence of a light does not justify the driver of another vehicle in running down the unlighted conveyance. And, if the absence of the light is not the proximate cause of the collision, disobedience of the statute is not material, and the plaintiff will not necessarily fail in his action. If the defendant should have seen the plaintiff's vehicle, although it was not lighted, the absence of the light is not the proximate cause of the collision: Huddy, 491.

The purpose of lights on an automobile is not only to enable a person approaching to see it, but also to enable the driver to see a reasonable distance ahead. This is so, although the statute does not provide for the degree of strength of the lights, but simply requires them to be visible for a reasonable distance: *Giles* v. *Ternes,* 93 Kan. 435.

In the absence of a statutory provision the owner of a motor vehicle is not necessarily required to equip his machine with any particular kind of light: *Currie* v. *Consolidated Ry. Co.,* 81 Conn. 383. But the light must be sufficient for the driver to distinguish other travellers and objects in the highway sufficiently far in advance that he may avoid a collision therewith: *Lannon* v. *Fond du Lac,* 141 Wis. 57. It will be noticed that sub-section 2 provides that "any lamp so used shall be clearly visible at a distance of at least two hundred feet." Apparently the Legislature intended to provide that the light from the lamps should be visible at that distance, but it has not said so. Sub-section 4 of section 9 prohibits certain lights equipped with a reflector.

Although the contributory negligence of the driver of a motor vehicle cannot be imputed to a passenger, the Court said in *Robillard* v. *Railroad Co.,* 216 Fed. 503: "But an examination of the many cases on that question shews that the writers of the opinions are careful to except a passenger or guest who with knowledge of the danger remains in such dangerous position . . . The plaintiff, as a reasonably prudent person, must have known of the danger incident to riding in a motor car without lights, over roads which neither

the driver of the car, nor any of the persons with him in the car, were familiar. When with full knowledge of that fact the plaintiff remained in the car he was as guilty of negligence as the driver himself." The same result seems to have been arrived at in *Buck* v. *Eaton,* 17 O. W. N. 191.

If the automobile carries the lights required by the law but sustains a collision with a buggy on account of the glare of the lights of another vehicle, the negligence of the driver of the automobile is a question for the jury: *Johnson* v. *Alberts,* 192 Mich. 25. The jury may properly find that it is the driver's duty to stop his automobile when his view is obscured by the glare of lights. So, too, when the view of the driver is dazzled from lights of buildings along the streets, it may well be said that proper care requires the stopping of the automobile: *Altenkirch* v. *National Biscuit Co.,* 127 N. Y. App. Div. 307.

In *State* v. *Bixby* (Vt.) 100 Atl. 47, it was held that a statute requiring lights on a machine operated during a certain period, does not apply when one has left his vehicle beside the highway with the machinery dead. And it has been held that such a statute has no application to a "dead" car while being towed by another car: *Musgrave* v. *Studebaker,* 48 Utah 410.

In *Bailey* v. *Freeman,* 7 O. W. N. 24, the defendant's car was left standing on the highway, near his gateway, from 5 p.m. to 8.30 p.m., with no lights shewing. The plaintiff's horse, while being driven on the highway, took fright at the car and was injured. Scott, Co.J., held that the Motor Vehicles Act did not require such a car to be lighted—that the lights were required only "while being driven on the highway." On appeal (7 O. W. N. 159), the Court held the defendant was liable at common law because the car was on the highway an unreasonable time. Mulock, C.J. and Clute, J., said the Act applied to this car, while Riddell, J., placed his judgment on the common law, on the admitted fact that the car had been on the highway an unreasonable time. It will be noticed that the Act now reads: "Whenever on a highway after dusk and before dawn," the apparent intention being that the lights shall be burning whether the car is being driven or not.

In *Bailey* v. *Freeman* a rather ineffectual attempt was made to define the terms "dusk" and "dawn." There appears to be no judicial interpretation of either word. Both

the Imperial and Standard Dictionaries define "dawn" as "the break of day; the first appearance of light in the morning." The Imperial Dictionaries defines "dusk" as "an approach to darkness; incipient or imperfect obscurity; a middle degree between light and darkness; twilight; as the dusk of the evening." The Standard Dictionary: "A condition of partial darkness and light, especially between the day and night; twilight, gloaming."

The driver of a motor cycle on a public highway, charged with failure to keep a light burning illuminating every letter or number on the motor cycle, is entitled to avail himself of the defence that he had taken all steps reasonably practicable to prevent the mark being obscured, or rendered not easily distinguishable: *Printz* v. *Sewell* (1912), 2 K. B. 511.

A company, the owners of a car, may be convicted of aiding and abetting the driver of an offence of not having a back light burning, if they have sent the car out in an improper condition: *Provincial Motor Cab Co.* v. *Dunning* (1909), 2 K. B. 599.

The term "commercial purposes" does not seem to have been the subject of judicial definition. In its broadest sense it might be capable of including a touring car carrying passengers for hire—a "jitney." But it is doubtful if this is the meaning the Legislature intended. There is no more reason why a car carrying passengers for hire should be equipped with a mirror, than the same car carrying the owner and his family. The probability is that it was intended to apply to "motor trucks or other motor vehicles for the delivery of goods." (Section 8 (2)). The section would seem to apply to a motor vehicle used by a merchant for the sole purpose of delivering his goods or merchandise. The regulations made by the Department seem to make a distinction between "commercial vehicles" and "motor trucks," although a motor truck is, undoubtedly, a vehicle used for commercial purposes.

The trial Judge found that a taxicab was being driven at a lawful speed on a highway when it ran into a pile of sand placed on the highway by the defendants, and was injured. The "head-lights" on the taxicab were not lighted, but the "side-lights" were. The plaintiff had a verdict, and in appeal it was said: "It was argued that the plaintiff was guilty of contributory negligence, but that was not established. The 'side-lights' of the taxicab were lighted; they were at

least in a sense 'head-lights'; and consequently the plaintiff was not violating the law. And in respect of other 'head-lights' the most that could be said was that they might, had they been lighted, have prevented the accident; but the undoubted occasion of the accident was the negligence of the defendants in placing the unlawful obstruction in the highway": *Robinson* v. *Campbell,* 8 O. W. N. 538.

Driving at night without lights is negligence *per se*: *Sheppard* v. *Johnson,* 11 Ga. App. 280. The mere fact that the defendant's automobile carried only one light, while the statute requires two, is not decisive against his right to recover for injuries sustained in an accident at night, but is some evidence that the defendant was not negligent: *Gittings* v. *Schenuit,* 122 Md. 282.

Drivers of automobiles must allow for the fact that their headlights will not illuminate the road around a curve, and they must therefore use particular care while negotiating a curve: *Marsh* v. *Boyden,* 33 R. I. 519.

Where the lights from an approaching car are so bright as to blind the eyes of the other driver, the latter may be negligent if he proceeds. The same principle applies where rain, mist or fog prevails so as to obscure the outlook, or where his eyes are blinded by the glare of the sun. In these cases the driver is bound to exercise proper care, and, if necessary, stop his car: *Knoxville Ry. Co.* v. *Vangilder,* 132 Tenn. 487; *McFern* v. *Gardner,* 121 Mo. App. 1; *O'Beirne* v. *Stafford,* 87 Conn. 354; *Chase* v. *Seattle Taxi Co.,* 78 Wash. 537.

See sub-sections (4) and (4*a*) to section 9 and notes thereto.

MARKERS ON BICYCLES.

7.—(1) A motor bicycle while being driven on a highway shall have exposed on the front and back thereof a marker furnished by the Minister of Public Works and Highways, showing in plain figures, not less than two inches in height, the number of permit of such motor bicycle. The marker on the front shall show the number of the permit on both sides and shall be fixed so that the number is plainly visible from either side of the bicycle. 2 Geo. V., c. 48, s. 7; 6 Geo. V., c. 47, s. 3; 7 Geo. V., c. 49, s. 4.

(2) This section shall come into force January 1st, 1918. 7 Geo. V., c. 49, s. 4.

A motor bicycle is defined in the notes to section 2, *ante*, where it is pointed out that having regard to the primary purpose of the Legislature to protect travellers on the highway, the American Courts seem inclined to hold that a motor cycle is a motor vehicle apart from statutory interpretation. In England the term "motor car" is held to include a motor bicycle: *Webster* v. *Terry* (1914), 1 K. B. 51.

This section does not apply to a motor bicycle owned by a person not residing in or carrying on business in Ontario for more than three consecutive months in each year: see section 10.

MARKERS ON MOTOR VEHICLES.

8.—(1) Every motor vehicle other than a motor bicycle, while being driven on a highway, shall have attached to and exposed on the front and back thereof, in a conspicuous position, a marker furnished by the Minister of Public Works and Highways showing in plain figures not less than four inches in height or such height as may be fixed by the Lieutenant-Governor in Council, the number of the permit issued for the current year. 2 Geo. V., c. 48, s. 8 (1); 4 Geo. V., c. 36, s. 4; 6 Geo. V., c. 47, s. 3; 7 Geo. V., c. 49, s. 5.

(2) The marker on the front shall be as far forward and as high from the ground as may be necessary to render it distinctly visible, and the marker on the back shall be so placed that the lower edge thereof shall not be lower than the body of the motor vehicle; provided that this subsection so far as relating to the position of the marker on the back shall not apply to motor trucks or other motor vehicles for the delivery of goods. 2 Geo. V., c. 48, s. 8 (2); 4 Geo. V., c. 36, s. 1.

(3) Every such motor vehicle shall carry a lamp so placed as to illuminate conspicuously at all times between dusk and dawn the number placed on the back of the vehicle. 2 Geo. V., c. 48, s. 8 (3).

8*a*. Every marker furnished by the Minister of Public Works and Highways under this Act shall be and remain the property of the Crown and shall be returned to the Department of Public Highways whenever required by the Department, and any person failing to so return the marker without reasonable excuse shall incur a penalty not exceeding $10, and the Minister may also for such failure refuse to issue a license or permit to such person. 8 Geo. V., c. 37, s. 5.

In an Iowa case it was held that where the owner of an automobile has duly registered his machine, but on account of the failure of the State authorities has not received a number plate, he can operate the machine under the plates of the previous year: *State* v. *Gish*, 168 Iowa 70.

In some jurisdictions penal laws have been enacted forbidding one from having in his possession a motor vehicle from which the manufacturer's serial number, or other distinguishing identification marks, have been removed. The purpose is to prevent the defacing, covering or destruction of the number or mark, to preserve the identity of the vehicle and thereby protect the public against violations of the law: *People* v. *Fernow*, (Ill.) 122 N. E. 155. Our Act requires the marker to be exposed only while the motor vehicle is being driven on a highway.

Where the driver of a motor car is convicted for the offence of driving a motor car on a highway without having the marker as required by this section, the company owning such car may be convicted of aiding and abetting the driver of the car in the commission of the offence inasmuch as the company must act through its agents, sending out a car in an improper manner, and it is not necessary to prove a criminal intent on the part of the company: *Provincial Motor Cab Co.* v. *Dunning* (1909), 2 K. B. 599.

Sub-section (1) of this section does not apply to a motor vehicle owned by a non-resident of Ontario: see section 10.

NUMBERS ON MOTOR VEHICLES.

9.—(1) No number other than that upon the marker furnished by the Minister of Public Works and Highways shall be exposed on any part of a

motor vehicle, but this shall not prevent telephone numbers or street addresses being painted on the side of any commercial vehicle. 6 Geo. V., c. 47, ss. 3 and 5 (3).

(2) The number shall be kept free from dirt and obstruction and the markers shall be so affixed that the numbers may be at all times plainly visible.

(3) It shall be unlawful to carry on any motor vehicle operated on a highway any light which revolves upon a pivot or other device, so that the rays of such light may be projected in different directions. 2 Geo. V., c. 48, s. 9; 7 Geo. V., c. 49, s. 6.

(4) It shall be unlawful to carry on a motor vehicle any lighting device of over four candle power, equipped with a reflector, unless the same shall be so designed, deflected or arranged that no portion of the parallel beam of reflected light when measured seventy-five feet or more ahead of the lamp shall rise above 42 inches from the level surface on which the vehicle stands. 7 Geo. V., c. 49, s. 7; 10-11 Geo. V., c. 74, s. 2.

(4*a*) Any device for the elimination of glare, approved from time to time by the Minister of Public Works and Highways, when in proper adjustment, and having a lamp of candle power not in excess of that authorized by the Minister for such device, shall be held to be in conformity with the next preceding subsection. 10-11 Geo. V., c. 74, s. 2.

(5) Any person who defaces or alters any marker furnished by the Minister of Public Works and Highways under this Act, or uses or permits the use of a marker so defaced or altered, upon any car owned by him, or who uses, or permits the use upon any car owned by him, of a marker issued by the Minister of Public Works and Highways for any other car, or any person who does not within six days forward a notice to the Department of Public Highways of the

sale or transfer by or to him of a car for which a permit has been issued, shall be guilty of an offence, punishable under section 24 of this Act. 7 Geo. V., c. 49, s. 8.

Sub-section (1) of this section does not apply to non-residents of Ontario: see section 10.

Sub-section (4) was not brought into force until a day to be named by the Lieutenant-Governor by his proclamation. See 7 Geo. V. c. 49, s. 7 (2). By the Motor Vehicles Amendment Act, 1920, this sub-section is repealed. The effect would appear to be to bring sub-section (4) into force without proclamation.

The following communication has been received from the Department of Public Highways:

"A report by Prof. Laing with respect to various devices for the elimination of glaring headlights, which will be published immediately, shows the result of a series of tests carried out for the purpose of bringing into effect the provisions of sub-section 4 and 4*a* of Section 9 of the Motor Vehicles Act.

Prof. Laing's report finds that, of the devices submitted for tests, twenty-four comply with the provisions of the Statute, eliminating glare in a reasonable degree, and permitting a safe driving light. The relative merits of the various devices are not in any way indicated by the report.

The maximum permissible candle power of lamp is prescribed by the report in each case; also proper adjustment, with respect to tilt of beam from the horizontal, and focal adjustment of the lamp.

It is to be pointed out that headlights of motor vehicles must produce adequate driving light, otherwise pedestrians on the highway and horse-drawn vehicles are endangered. A number of devices submitted for test, overcame glare; but do so by reducing, rather than controlling or deflecting the light. The driving light was thus lessened in a dangerous degree.

The effectiveness of the approved devices in overcoming the dangers and inconveniences of glare headlights will largely depend upon a general and willing co-operation to that end. Manufacturers may do much by seeing that cars, when sold, are equipped with approved devices, in proper adjustment. Present owners will, no doubt, without unnecessary delay, adopt approved means in this regard. It would not, however, be unreasonable for police authorities throughout the Province

to delay a rigid enforcement of the Act until January, 1921, concurrent with the beginning of the next license year, in order that ample time for compliance with the law may be given.

The adjustment of headlights may readily be made after night, standing the car on level ground or a horizontal floor, and facing a wall, fence or screen. Service stations, in a number of instances in the United States, have provided headlight testing service, a form of co-operation which is exceedingly useful in assisting owners to keep their headlights in proper adjustment.

GLARE-REDUCING DEVICES APPROVED BY THE REPORT ARE AS FOLLOWS:

Sun-Ray, Helophane, Sills (Green Top), Sills (Clear), Benzer, Primolite, Violet Ray, Sunlite, Kopps, Liberty, Macbeth, Clamert, Patterson, Lee Knight, McBride, Levelite, Raydex, Conophore (Clear), Conophore (Novial), McKee, Osgood, Shaler Roadlighter, Legalite M. III. 9/1/8, Alvo.

NON-RESIDENTS OF PROVINCE.

10.—(1) The provisions of sections 3, 7, sub-section (1) of section 8 and sub-section (1) of section 9 shall not apply to a motor vehicle owned by any person who does not reside or carry on business in Ontario for more than three consecutive months in each year, if the owner thereof is a resident of some other Province of Canada, and has complied with the provisions of the law of the Province in which he resides as to registration of a motor vehicle and the display of the registration number thereon.

(1*a*) The Lieutenant-Governor in Council may make regulations providing for the temporary suspension or modification of any of the provisions of sections 3, 4, 7, 8 and 9 with respect to any person who is a resident of the United States of America and who has complied with the provisions of the law of the State in which he resides as to the registration of motor vehicles and the display of the registration

number thereon, and in the case of a driver as to obtaining a license to drive. 6 Geo. V., c. 47, s. 6; 7 Geo. V., c. 49, s. 9.

(2) This section shall apply to such person only to the extent to which under the laws of the Province or State in which he resides like exemptions and privileges are granted with respect to a motor vehicle registered under the laws of and owned by residents of Ontario. 3-4 Geo. V., c. 52, s. 3; 6 Geo. V., c. 47, s. 7.

The only regulations made by the Lieutenant-Governor-in-Council will be found in the Appendix. No regulations appear to have been made pursuant to sub-section (1*a*).

PROVISIONS AS TO SPEED.

11.—(1) No motor vehicle shall be driven upon any highway within a city, town, or village at a greater rate of speed than 20 miles per hour; nor upon any highway outside of a city, town, or village at a greater rate of speed than 25 miles per hour, nor at a street intersection or curve where the driver of the vehicle has not a clear view of approaching traffic at a greater rate of speed than 10 miles per hour in a city, town, or village, or 12½ miles per hour outside a city, town, or village, but the council of a city, town or village may by by-law set apart any highway or any part thereof on which motor vehicles may be driven at a greater rate of speed for the purpose of testing the same, and may pass by-laws for regulating and governing the use of any such highway or part thereof for such purpose. 2 Geo. V., c. 48, s. 10; 9 Geo. V., c. 57, s. 3.

(2) Notwithstanding the provisions of sub-section (1), any person who drives a motor vehicle on a highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the highway and the amount of

traffic which actually is at the time, or which might reasonably be expected to be on the highway, shall be guilty of an offence under this Act. 2 Geo. V., c. 48, s. 11.

This section provides for the maximum rate of speed at which a motor vehicle may be driven on a public highway, but it does not protect the driver or owner from the result of his negligence even if he has kept within the statutory limit.

The general rule relating to the speed with which a motor vehicle may be driven on a public highway is that, in the absence of a statute prescribing a slower rate, it shall not exceed a reasonable rate, considering the nature of the machine and all of the surrounding circumstances. The speed of the machine, while usually of great importance, is not the sole criterion of the care of the driver, for, though he is not driving at an excessive speed, he may be found negligent for a violation of the law of the road or of some positive regulation, or through incompetency, inattention, or a mistake in judgment. What constitutes a " reasonable " rate is generally a question for the jury, and depends on the surrounding circumstances, such as the character of the highway, the amount and nature of the traffic, obstructions in and along the highway, the nature of the machine, the darkness or other atmospheric conditions, and the noise or other warnings given by the machine. That is to say, the speed must be commensurate with the dangers to be anticipated. A holding in a particular case that a given speed is or is not excessive is of little value, for the circumstances in no two cases are identical: speeds of 20, 15, 12 and even 8 miles an hour have been condemned: Huddy, 373-5.

In one case it was held to be gross negligence for the driver of an automobile to drive his machine at a rate of 5 or 6 miles an hour through a crowd of children who were playing in the street: *Haacke* v. *Davis,* 166 Mo. App. 249.

No owner of an automobile is necessarily exempt from liability for collision in a public street by simply shewing that at the time of the accident he did not run at a rate of speed exceeding the limit allowed by the law. He still remains bound to anticipate that he may meet persons at any point, and he must keep a proper lookout for them, and keep his machine under such control as will enable him to avoid a

collision with another person using proper care and caution; and if necessary, he must slow up and even stop. No blowing of a horn without an attempt to slacken the speed is sufficient, if the circumstances at a given point demand that the speed be slackened or the machine be stopped, and such a course is reasonably practicable: *Kessler* v. *Washburn,* 157 Ill. App. 532.

"We cannot sustain the defendant's contention that the record must show that the defendant drove his automobile at a prohibited rate of speed for the space of a full mile. Such a construction of the law would be against the letter and spirit of the Act. It is the excessive rate of speed which is prohibited, and not its continuance for any specified distance. The Act would fail of its purpose to protect the lives and property of citizens if it could not punish a reckless driver merely because he had checked his unlawful speed within a few feet of the mile limit": *Commonwealth* v. *Pfeiffer,* Pa. Co. Ct. 476. To the same effect is the decision in *R.* v. *Ley,* 7 D. L. R. 767; 20 Can. C. C. 170, where it was held that the term "greater speed than one mile in four minutes," in the Alberta Motor Vehicles Act, means any speed for any distance less than a mile, which, if continued, would result in a full mile being covered in less than four minutes; the word "speed" is used as meaning rate of motion, and the words "one mile in four minutes" simply supply the measure of time.

A Highway Act prohibited any person driving certain vehicles at any speed that is greater than is reasonable and proper, having regard to the traffic in the highway. The appellant drove his tricycle at a speed from eighteen to twenty miles per hour along a highway, but there was not evidence that any traffic was interrupted, interfered with, incommoded or affected. It was held that the words "having regard to the traffic in the highway" meant having regard to the traffic on the road, and not to the traffic in the immediate vicinity of the motor: *Smith* v. *Boon* (1901), 84 Law Times 593.

It has been held in many cases that a statute fixing a maximum rate of speed does not relieve the driver of a motor vehicle from the duty to run at a lower rate of speed where prudence and safety so require: *Brinkman* v. *Pacholke,* 41 Ind. App. 662; *Rasmussen* v. *Whipple,* 211 Mass. 546; *Thies* v. *Thomas,* 77 N. Y. S. 276.

The New York Motor Vehicle Law provides that local authorities may "set aside for a given time a specified public highway for speed tests or races, to be conducted under proper restrictions for the safety of the public." It was held that where a State law limits by general provisions the rates of speed for motor vehicles on the highway, except in cases where greater rates are permitted by local authorities, such an ordinance will be invalid if it applies only to certain specified persons to use the highway as a race course for automobiles on a particular occasion. It amounts to a diversion of the highway from public to private use. In all such cases strict construction of the statute will be the rule of law, and the adherence to its terms the requirement: *Johnson* v. *New York,* 186 N. Y. 139.

The driver of a motor vehicle must at all times have his car under reasonable control, so that with due diligence he can stop to avoid injury to other travellers who are exercising reasonable care for their safety; and under such control that he can avoid collision with an approaching street car or railroad train.

Evidence of the speed indicated by a speedomoter may be received on the issue of the rate of speed at which a motor vehicle was travelling. And the fact that one giving an estimate of speed relies on a speedometer which he observed, does not make his evidence incompetent as hearsay: *Commonwealth* v. *Buxton,* 205 Mass. 49. And the evidence of a driver of an automobile and his wife, as to the speed of the car, based on the showing of a speedometer, is to be preferred in a prosecution for operating a motor vehicle at an unlawful speed, to mere opinion evidence: *Rex* v. *Barker,* 47 Nova Scotia R. 248; 12 D. L. R. 346.

A statute prohibiting driving at an "unreasonable" rate of speed may be enforced in criminal as well as civil cases: *Rex* v. *Wells,* 91 L. T. 98.

A person who drives an automobile at an unreasonable rate of speed at a place where he must know there is a possibility of other cars coming at a great rate of speed the other way, is guilty of negligence: *The B. & R. Co.* v. *McLeod* (1912), 5 A. L. R. 176.

The driver of a motor car was convicted of driving his car over a measured distance at a speed exceeding the speed limit, the only evidence being that of two constables who had been stationed at either end of the measured distance,

and who deposed, the one to the time at which the car entered, the other to the time at which it passed out of the measured distance. An objection to the sufficiency of the evidence, on the ground that as each of these times was a fundamental fact in the charge it could not be established by the uncorroborated evidence of a single witness, was overruled and the conviction sustained: *Scott* v. *Jamieson* (1914), S. C. (J.) 187.

A police sergeant proved that he placed a police constable at a certain point on the road and stationed himself on the same road at a distance of a quarter of a mile from the constable; that when the motor vehicle passed him the constable signalled to the sergeant and he immediately started the second hand of his stop-watch and stopped the same when the car passed him, and that the time taken by the car between the two points was 31 2-5 seconds, or at the rate of 28 miles an hour. It was held that the evidence of the police sergeant was not evidence of "opinion merely, but was evidence of the fact recorded by the stop-watch as to the time, and, therefore, the defendant was not convicted "merely on the opinion of one witness as to the rate of speed": *Plancq* v. *Marks,* 94 L. T. R. 577.

A driver of a motor car was convicted of driving on a public highway "at a speed which was dangerous to the public having regard to all the circumstances of the case." It was held that evidence as to the traffic which might reasonably be expected to be on the highway was properly admitted: *Elwes* v. *Hopkins* (1906), 2 K. B. 1.

"Intersection," in its broadest sense, means the place where two streets cross each other: *Pacific Paving Co.* v. *Verso,* 12 Cal. App. 362. Where applied to streets it means a place of crossing; a point where two lines or the line on which two surfaces cross each other: *Godfrey* v. *City of New York,* 104 N. Y. App. 357 But having in view the object of this section that could not have been the intention of the Legislature. In construing a similar statute in North Carolina, the Court said: "We are clearly of the opinion that the Legislature intended to use the word in the sense of 'joining,' or 'touching,' or coming in contact with, or 'entering into,' and did not intend that the word 'intersect' should be so restricted in its meaning as not to protect pedestrians and other persons using a public street at a point or space

where another street comes into it, although it does not cross it. We should therefore give the word its broader meaning, which will include all space made by the junction of streets, where accidents are just as liable to occur as where two streets cross each other": *Manly* v. *Abernathy,* 167 N. Car. 220.

In *Wales* v. *Harper* (1911), 17 W. L. R. 623, it was said: "Water Street opens on the east side of Main Street, and does not continue beyond the west side of it. In a graphical sense this does not constitute an intersection, as Water Street may be said to terminate at the east line of Main Street. Still, I hold this to be an intersection under the Motor Vehicles Act and the city by-laws."

Compare section 3 of the Highway Travel Act, *post.*

But the passage of a path across a highway and common does not make an intersection of highways: *Aiken* v. *Metcalf,* (Vt.) 102 Atl. 330; *Muther* v. *Capps,* 177 Pac. 882.

At street intersections and corners a higher degree of care is required of the driver than is required where a clear view of the highway can be obtained. In using a street for automobile traffic a driver knows that at street intersections and corners other vehicles may approach to cross or turn into the one over which he is travelling, and that at such points crosswalks are ordinarily provided for the use of pedestrians. He should, therefore, operate his car with that degree of care which is consistent with the conditions thus existing, the rate of speed and his control of the machine varying according to the traffic conditions: *Rowe* v. *Hammond,* 172 Mo. App. 203.

One proceeding in broad daylight toward an intersection cannot escape the effect of the regulation by claiming that he was not aware that he was approaching intersecting streets: *Newton* v. *McSweeney,* 225 Mass. 402.

A person operating an automobile and one riding a bicycle owe to each other the duty to avoid a collision. The bicycle rider must be vigilant under all circumstances, and keep a proper lookout for automobiles, and he may be guilty of contributory negligence in approaching a much travelled intersecting city street, and looking only once for approaching vehicles, where had he exercised more care he might have seen, in time to avoid, the automobile which struck him: *Rex* v. *Wilson,* 32 Can. C. C. p. 102; 50 D. L. R. 117.

It is the essential duty of a person driving a motor vehicle to keep a good lookout while approaching a tramway

crossing, and it is the duty of such person coming from a cross-road into a main artery of traffic to wait and give way to that traffic, and not to throw himself headlong into the advancing traffic along the main travelled road: Per Irving, J.A., *Monruft* v. *B. C. Electric R. Co.,* 9 D. L. R. 569.

In the absence of some special rule or legislation to the contrary the general rule is that the one reaching a street intersection first has the right-of-way: *Elgin Dairy Co.* v. *Shepherd* (1915), 183 Ind. 466. And it is the duty of one approaching the crossing of a street intersection where another vehicle is first at the crossing to give it an opportunity to clear the same and to use due care to avoid a collision: *McClung* v. *Penn. Taxi Cab Co.,* 252 Pa. 478.

Where the driver's view is obstructed by buildings, trees or fences at a corner, or by any object on the street, he is bound to use extraordinary care: *Callahan* v. *Moll,* 160 Wis. 523; *Deputy* v. *Kimmell,* 73 W. Va. p. 601.

In *O'Neil* v. *Potts* (1915), 130 Minn. 353, it was held that the admission of evidence to shew a practice among automobile drivers of signalling to cars behind them before stopping or turning, was not prejudicial error. Failure to conform to the practice was merely evidence tending to shew want of ordinary care. In *Texas & P. Ry. Co.* v. *Beymer,* 189 U. S. 468, Mr. Justice Holmes said: "What usually is done may be evidence of what ought to be done; but what ought to be done is fixed by a standard of reasonable prudence, whether it is usually complied with or not."

The rule of the road requiring drivers to keep to the right hand side applies to corners: *Johnson* v. *Heitman,* 88 Wash. 595. And where the driver violates this rule and turns sharply to the left hand, in other language, "cuts the corner," he is guilty of negligence: *Holden* v. *Hadley,* 180 Mich. 636; *Irwin* v. *Judge,* 81 Conn. 492.

Evidence of speed at a crossing is always cogent evidence of negligence and will usually suffice to fix liability. It is a fundamental rule of law and common sense that motor vehicles must be driven slowly on approaching a crossing. The test seems to be whether the driver has control of the situation, whether he is so driving that he can stop, if necessary, soon enough to avoid an accident. For example, if he is driving in the open country where his view is unobstructed he may drive faster than at a corner where he cannot see down the cross street, but he must in either event

be prepared to avoid any vehicle on the cross street: *Picken* v. *Miller,* 108 N. E. 968; 59 Ind. App. 115.

Where a vehicle enters a driveway or cross-road at an immoderate rate of speed and collides with another vehicle before it can get out of the way, that is negligence: *Hodges* v. *Chambers,* 171 Mo. App. 563. So where a person is driving on the highway at a moderate rate of speed and is struck by a motor vehicle coming fast out of an alley, there is evidence of negligence: *Shimoda* v. *Bundy,* 24 Cal. App. 675; *Scragg* v. *Sallee,* 24 Cal. App. 133.

While it is the duty of vehicles approaching a main road from a side road to give way to vehicles in the main road, this does not absolve vehicles on the main road from the duty of approaching the entrance to the side road with caution: *Robertson* v. *Wilson* (1912), S. C. 1276 Ct. of Sess.

Monruft v. *B. C. El. Ry. Co.* is a British Columbia case, and *Robertson* v. *Wilson* is a Scotch case. Neither in Scotland nor in British Columbia does there appear to be any such rule of the road as provided for in sub-section 3 of section 3 of the Highway Travel Act; and, in Ontario, these cases must be read in connection with that provision.

Where the primary cause of an automobile collision was the defendant's violation of the rule of the road by running on the wrong side of the road when approaching an intersection, and cutting the corner at the intersection, it was held that he could not evade the consequences of his negligence by setting up that the plaintiff had swerved in the emergency to the wrong side of the cross-road in an attempt to avoid the collision: *Bain* v. *Fuller* (N.S.), 29 D. L. R. 113.

"The law requires that every person shall take due care for the safety of himself and others according to the circumstances in which he is placed. Vehicles have the right-of-way on the portion of the highway set apart for them, but at crossings all drivers, particularly of motor vehicles, must be highly vigilant and maintain such control that, on the shortest possible notice, they can stop their cars so as to prevent danger to pedestrians; and on the other hand, between crossings drivers are not held to the same high standard of care, although, of course, they must be constantly on the lookout for the safety of others": *Virgilio* v. *Walker,* 254 Pa. 241.

A chief of police has no power to authorize a speed in excess of that allowed by law, and the Board of Police Commissioners is not liable for the acts of a constable acting

under such illegal authorization given by him on his own responsibility: *Bowles* v. *City of Winnipeg* (1919), 45 D. L. R. 94.

A speed which may be perfectly proper along a straight road may be decidedly excessive when the driver is approaching a corner, or a curve in the road where his view of the traffic is obstructed. This section provides a maximum rate of speed in such cases of 10 miles in urban municipalities and 12½ miles in rural municipalities. In some jurisdictions the limit is as low as six miles per hour.

Where one turns a corner on a wet pavement at such a rate of speed that the automobile skids and collides with another vehicle, when the driver of the automobile attempts to straighten his course, a finding of negligence may be justified: *Wright* v. *Young,* 160 Ky. 636.

In turning a corner to the right the principal duty of the driver is to avoid pedestrians at the crosswalks and vehicles proceeding along the street into which he is turning. But when he turns a corner towards the left he must not only exercise due care to avoid pedestrians, but must also use reasonable care to avoid a collision with a vehicle which is approaching from his rear and attempting to pass on the left side at the same time that he is moving toward the left to turn the corner. He must also take precautions to avoid vehicles proceeding along the intersecting street. Municipal and statutory enactments generally prescribe the course to be followed by one turning toward the left at a street intersection. When so turning, the driver is generally forbidden to cut the corner, but must pass to the right of the centre of the intersecting streets. The failure to obey such a requirement, if it is the proximate cause of a collision with another vehicle, may preclude the guilty driver from recovering for his injuries on the theory of contributory negligence, and may render him liable for the injuries sustained by the person in the other vehicle. Indeed, if no excuse is shewn for the cutting of the corner, and it is a proximate cause of the collision, a finding of negligence can hardly be avoided: *Jacobs* v. *Richard Carvel Co.,* 156 N. Y. S. 766. And the driver cutting a corner cannot evade the consequences of his negligence by alleging that the plaintiff, who originally was on the proper side of the road, swerved in the emergency to the wrong side of the cross-road in an attempt to avoid the collision: *Bain* v. *Fuller,* 29 D. L. R. 113.

In turning corners drivers should hold their cars well in hand, and give timely signals at points where people should reasonably be expected to be, and where they have a right to be: *Manly* v. *Abernathy,* 167 N. Car. 220.

"The automobile must use only the carriage way of the street, while the pedestrian, except at street crossings, uses generally only the sidewalk. But the pedestrian, in the use of the street at a regular crossing, has the same right to its use as vehicles, and is under no legal duty to give way to automobiles. The automobile can go around him as well as he can go around it. It can get out of the way of the pedestrian about as easily and quickly as he can get out of its way, although it is usually the case, and rightfully so, that the pedestrian endeavours to keep out of the way of vehicles at street crossings; but, if he does not, this does not excuse the driver of that vehicle who runs him down, unless it be that the driver was free from negligence, and the pedestrian by his own want of care was to blame for the collision": *Weidner* v. *Otter,* 171 Ky. 167.

The question of negligence, generally, will be found more fully discussed under section 23; and see the notes to section 255 of the Criminal Code, *post.*

The following table, shewing the distance at which a motor or other vehicle travels per second, may be useful:—

Speed in miles per hour.	Feet travelled per second.	Speed in miles per hour.	Feet travelled per second.
1	1.469	16	23.504
2	2.938	17	25.
3	4.389	18	26.450
4	5.876	19	27.915
5	7.345	20	29.380
6	8.814	21	30.850
7	10.383	22	32.320
8	11.752	23	33.790
9	13.221	24	35.360
10	14.690	25	36.830
11	16.160	26	38.4
12	17.628	27	39.9
13	19.4	28	41.532
14	20.766	29	42.991
15	22.035	30	44.070

The following table was prepared by Mr. A. A. Dion, General Superintendent of the Ottawa Electric Company. It shews the distances required for emergency stops for street cars and automobiles:—

Speed in miles, per hour.	For a street car.	For an automobile.
8	63 feet	8 feet
10	70 "	10 "
12	78 "	13 "
14	90 "	17 "
16	105 "	22 "
18	125 "	29 "
20	150 "	38 "

The writer does not vouch for the accuracy of this table; it is probably correct under most circumstances. Much, however, must depend upon the weight of the car or automobile, and the condition and grade of the highway.

RACING PROHIBITED.

12. No person shall drive a motor vehicle upon a highway, in a race or on a bet or wager. 2 Geo. V., c. 48, s. 12.

Section 7 of the Highway Travel Act prohibits horse-racing on the highway. Section 285 of the Criminal Code is as follows:—

"Every one is guilty of an indictable offence and liable to two years' imprisonment who, having charge of any carriage, motor vehicle, automobile or other vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person."

See the notes to this section, *post*.

By the Motor Act, 1903, if any person drives a motor car on a public highway "recklessly or negligently, or at a speed or in a manner which is dangerous to the public," he is guilty of an offence. Held, following *Rex* v. *Wells*, 68 J. P. 392, that driving recklessly, driving at a speed dangerous to the public, and driving in a manner dangerous to the public, were separate offences: *Rex* v. *Cavan Justices* (1914), 2 Ir. R. 150, K. B. D.

Where two automobilists are unlawfully or negligently racing on the highway, and a traveller is struck by one of the machines, he may have his action against either one, or against both jointly, for they are jointly and severally liable: *De Carvalho* v. *Brunner,* 223 N. Y. 284. And in case of the death of a traveller under these circumstances each of the two automobilists is guilty of manslaughter: *Reg* v. *Swindall,* 2 C. & P. 229.

The penalty for any violation of this section is fixed by section 24.

Section 23 of the Nova Scotia Act is the same as section 12 of the Ontario Act. It was there held that if two motor vehicles are on a public highway, and one endeavours to pass the other, the first one has a perfect right to put on more speed and prevent it from so doing. If neither machine exceeds the speed limit, this cannot be considered racing within the meaning of the Act. Ritchie, E.J., said: "I think the word 'race,' as used in the section, means a pre-arranged race. I am inclined to think that the words 'or for a bet or wager' constitute some indication in favour of the construction that the section does not cover the kind of thing which the parties were engaged in. The object aimed at, in my opinion, is the prevention of the use of the public highway as a race track, such as being likely to attract a number of people and be accompanied with the danger to the public. A race conveys the idea that the persons engaged will attain as high a rate of speed as possible; it cannot, I think, be called a race within the meaning of the Act, where both parties are not exceeding the moderate rate of speed permitted by the Act. A race in the ordinary acceptation of the word is likely to cause a breaking of the speed limit and likely to be dangerous to the public, and therefore it is prohibited." Russell and Langley, JJ., agreed with Ritchie, J. Mellish, J., expressed no opinion on this point: *Canning* v. *Wood* (1918), 52 N. S. R. 452; 44 D. L. R. 525.

See further notes under section 7 of the Highway Travel Act, *post.*

RESTRICTIONS AS TO AGE.

13. No person under the age of 16 years shall drive a motor vehicle, and no person over the age of 16 years and under the age of 18 years shall drive a motor vehicle on the highway unless and until such

person has passed an examination and obtained a license as provided in this Act for a person who drives a motor vehicle for hire, pay or gain. 2 Geo. V., c. 48, s. 13; 7 Geo. V., c. 49, s. 10.

A person attains the age of 16 years on the first moment of the day next before the sixteenth anniversary of his birth. Thus, if he were born on the 16th January, 1900, he will attain the age of 16 on the 15th January, 1916; and as the law does not recognize fractions of a day, the age would be attained at the first moment of the 15th: *Grant* v. *Grant,* 4 Y. & C. 256.

"The object and purpose of the statute is to promote the safety of those travelling the public highways. While the motor car is not, in and of itself, to be deemed a dangerous machine, nevertheless it becomes such in the hands of a careless and inexperienced person. The statute has, in effect, so declared when it forbids its operation by persons under the age of eighteen. It, in substance, declares that such persons do not possess the requisite care and judgment to run motor vehicles on the public highways without endangering the lives and limbs of others": *Schultz* v. *Morrison,* 91 Misc. R. (N.Y.) 248; *Daily* v. *Maxwell,* 152 Mo. App. 415.

The owner of an automobile may be charged with negligence if he permits young children to run the machine, and their immaturity or lack of judgment occasions injuries to others. Liability is not imposed on the owner because of the relationship between the parties, or because of the ownership of the machine, but because of the owner's negligence or wrongful act in entrusting the machine to a person of immature years and judgment: *Parker* v. *Wilson,* 179 Ala. 361.

Permitting a minor to drive a car contrary to the statutory requirements as to the age of the driver is *ipso facto* negligence: *Discepolo* v. *City of Fort William,* 11 O. W. N. 73.

The plaintiffs, two brothers, recovered judgment against the defendant for injuries sustained in a collision between the plaintiff's motor cycle and defendant's automobile. The driver of the motor cycle was under the age limit. On appeal, Meredith, C.J.C.P., said the defendant appeared to have been in fault, "but the plaintiffs could not take advantage of the defendant's two faults, because the plaintiff (the driver) was

at the time of the accident, unlawfully driving the motor cycle—driving it in violation of a plain provision of the Motor Vehicles Act."

Riddell, J., said it was argued that the plaintiff (the driver) being between 16 and 18 years of age, and having no license, was a trespasser upon the road, and therefore his rights were limited as stated in *Sercombe* v. *Township of Vaughan* (1919), 45 O. L. R. 142, and similar cases; but he placed his judgment on the ground that the driver of the motor cycle was guilty of contributory negligence disentitling him to recover;; and in that view the legal point need not be considered. The other judges agreed with Riddell, J.: *Buck* v. *Eaton,* 17 O. W. N. 191.

In *Godfrey* v. *Cooper* (1920) 46 O. L. R. 565, Middleton, J., said, in his opinion, a mere failure to obtain a license does not deprive the driver of any right of action he could otherwise have against any person who injured him by negligence. Nor could a defendant rely upon any breach of the provisions of the Statute unless he can shew that the breach of the Statute was a proximate cause of the accident. Nor could any such defence avail against a passenger in the car—he is not so identified with the driver as to be disentitled to recover by the fault of the driver.

The same learned Judge distinguishes this case from cases like *Sercombe* v. *Vaughan,* which was an action against a municipality for damages caused by plaintiff's motor truck breaking through a bridge. There there was no wrongful act resulting in injury, but a mere failure to perform a statutory duty; and before the plaintiff could succeed, he must shew that the defendant owed a duty to him, and he failed in this when it appeared that by reason of some fact he was not lawfully upon the highway. The obligation to repair the highway is an obligation to those lawfully upon the highway.

But a passenger may be so identified with the driver that the driver's negligence may be imputed to the passenger. Where a mother was riding in a motor vehicle which was being driven by her son, and she knew that he was under 16 years of age, and prohibited from driving a car, Latchford, J., held that she could not recover where the son's negligence contributed to the accident: *Roe* v. *Township of Wellesley* (1918), 43 O. L. R. 214.

INTOXICATED DRIVERS.

14. No intoxicated person shall drive a motor vehicle. 2 Geo. V., c. 48, s. 14.

A man may be said to be intoxicated when his passions are visibly excited or his judgment impaired: *State* v. *Pierce,* 65 Iowa 85; or whenever he is so much under the influence of intoxicating liquors that his acts, or conduct or movements are affected, so as to be noticeable by others: *Sapp* v. *State,* 116 Ga. 182. Whenever a man is under the influence of liquor, so as not to be entirely himself, he is intoxicated. Although he can walk straight, attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of the liquor so as not to be himself, so as to be excited from it, and not to possess that clearness of intellect and control of himself that he otherwise would have, he is intoxicated: *Elkin* v. *Buschner* (Pa.), 16 Atl. 102.

Intoxication from the voluntary use of any drug taken to gratify the appetite, is considered in law the same as intoxication from the voluntary use of liquor: *Commonwealth* v. *Detweller,* 229 Pa. 304. The contrary seems to have been held in *Ring* v. *Ring,* 112 Ga. 854, and *State* v. *Kelley,* 47 Vt. 294; but bearing in mind that the object of this legislation is to protect travellers on the highway, a person may be said to be equally intoxicated, whether the condition is created by whiskey or opium.

It is not necessary that a man be violent or quarrelsome to be intoxicated: *St. Louis Ry.* v. *Waters,* 152 S. W. 137.

Experience has shewn that a motor vehicle operated by an inexperienced driver is a menace to other travellers, and strict measures must be taken to suppress such conduct. Hence, the operator of a motor vehicle when in an intoxicated condition will under modern statutes generally subject the offender to a criminal prosecution: *Curtis* v. *Joyce* (N.J.), 99 Atl. 932. But the operation of an automobile while intoxicated is not a public or common nuisance indictable at common law: *State* v. *Rodgers,* 102 Atl. 433.

In the last mentioned case it was held that the expression in a New Jersey statute: "Under the influence of intoxicating liquors," covers, not only all well known and easily recognized conditions and degrees of intoxication, but any abnormal, mental or physical condition which is the

result of indulging in any degree in intoxicating liquors and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess.

"The weight of opinion and the inherent evidence appearing in the sweeping character of the language of the section as a whole, lead to the presumption that the expression 'under the influence of intoxicating liquor' as used in the Motor Vehicle Act, is to be taken not only to cover all the well known and easily recognized conditions and degrees of intoxication, but to reach back to even slight intoxication, and to include any abnormal mental or physical condition which may arise in the operator of a motor vehicle, as the result of indulging in any degree, or at all, in any of those things described as intoxicating liquors, as tending to deprive him of that clearness of intellect and control of himself which he would otherwise possess." Babbitt, par. 465.

A witness may give his judgment as to whether a person whom he saw was intoxicated. "A child six years old may answer whether a man (whom it has seen) was drunk or sober; it does not require science or opinion to answer the question, but observation merely. . . . Whether a person is drunk or sober, or how far he was affected by intoxication, is better determined by the direct answer of those who have seen him than by their description of his conduct. Many persons cannot describe particulars, and if their testimony were excluded great injustice would frequently ensue": *People* v. *Eastwood,* 4 Kernan 562 (N. Y. App.).

Section 24 provides a penalty not exceeding $50 or one week's imprisonment, or both, for a violation of this section; for the second offence not exceeding $100 or one month's imprisonment, or both, and for the third or any subsequent offence, imprisonment not exceeding six months.

In the event of a third or subsequent conviction under this section, the motor vehicle shall be seized, impounded and taken into custody of the law for a period of three months: Section 27. The costs of storage becomes a lien on the motor vehicle: Section 27 (2).

Section 24*a*, passed in 1920, now provides that every person who violates the provisions of section 14 shall, for the first offence, be imprisoned for a period not exceeding 30 days, and not less than 7 days, for a second offence for a period not exceeding three months, and not less than one month, and for a subsequent offence for a period not exceed-

ing one year, and not less than three months. 10-11 Geo. V. c. 74, s. 5.

Compare section 6 of the Highway Travel Act, *post.*

GLASS ON HIGHWAYS.

14*a*. No person shall throw or deposit or knowingly leave on a highway any glass, nails, tacks, scraps of metal or other material which may be injurious to the tires of motor vehicles. 8 Geo. V., c. 37, s. 6.

For the violation of this section a person incurs the penalties mentioned in section 29.

PASSING STANDING STREET CAR.

15. When a motor vehicle meets or overtakes a street car or a car of an electric railway which is operated in or near the centre of the travelled portion of the highway, which is stationary for the purpose of taking on or discharging passengers, the motor vehicle shall not pass the car or approach nearer than six feet measured back or forward from the rear or front end, as the case may be, of the car on the side on which passengers are getting on or off until such passengers have got on or got safely to the side of the street as the case may be. 3-4 Geo. V., c. 52, s. 4; 6 Geo. V., c. 47, s. 8.

In most jurisdictions statutes have been passed regulating the passing of street cars by motor vehicles. This section follows very closely the provisions of the Pennsylvania Statute of 1909.

The driver of a motor vehicle must anticipate that persons will be getting off and on street cars standing in the streets; and it is his duty, apart from the statute, to have his car under such control that he can avoid injury to such persons: *New York Trans. Co.* v. *Garside,* 157 Fed. 521. Not only must he expect passengers on the side of the cars from which they alight, but he must anticipate that some passengers may pass behind the car on the other side: *Johnson* v. *Johnson,* 137 Minn. 198.

The defendant was held liable for an injury to a person seeking to board a standing street car, where the chauffeur attempted to pass between the car and a vehicle which he had overtaken. "I think that under all the circumstances, he (the driver) was called upon to exercise a great degree of care and caution when passing between another vehicle and a street car, as he did under these circumstances, and to expect accidents similar to the one in question": Metcalfe, J., *Rose* v. *Clark* (1911), 21 Man. R. 635.

To the same effect is *Sternfield* v. *Willison,* 161 N. Y. Supp. 472, where the driver of an automobile, well acquainted with conditions, without sounding his horn, drove his car into a narrow space between the curb and a trolley car standing to discharge and take on passengers, was held guilty of negligence. "The defendant says that he stopped at the rear end of the north bound car and waited until the conductor had closed the rear door and given signals to go ahead. But he did not wait until the car moved ahead, nor until the passengers were out of the way."

Where the plaintiff, after alighting from a street car, looked up and down the street and then passed behind the car toward the other side of the street, and was immediately struck by the defendant's automobile, which was being driven at a great speed within a few inches of the car, it was held that the questions of negligence and contributory negligence were for the jury: *Dugan* v. *Lyon,* 41 Pa. Sup. Ct. 52. And, where there was evidence that a street car conductor stepped off the front end of his car to the street for the purpose of going to the rear thereof, and that when he stepped off, an automobile going from 3 to 5 miles per hour struck him, though there was plenty of room near the curb for the automobile to pass in safety, it was held that the negligence of the driver of the automobile was a question for the jury: *Caesar* v. *Fifth Avenue Stage Co.,* 45 Misc. (N.Y.). 331.

"It will be observed that the defendant, in violation of the statute, passed the street car after it had stopped, and on the side on which passengers were getting off. It is clear, therefore, that the defendant was guilty of negligence which resulted in the plaintiff's injuries. Aside from the Act of Assembly, it was a reckless and negligent act of the defendant in driving his machine at such speed and so close to the street car when the passengers were alighting, and would necessarily proceed to cross the street to the sidewalk. His conduct was

clearly a violation of duty which made him responsible for any resultant injury. He not only disregarded a plain duty which he owed to the twelve or fifteen passengers alighting from the street car, but violated a positive command of a statute which required him not to pass the street car while it was at rest. He, therefore, not only failed to observe a plain duty imposed by the civil law, but was also an offender against a criminal statute of the Commonwealth. The Court was manifestly correct in conceding that the defendant's conduct resulting in the plaintiff's injuries was actionable negligence": *Lewis* v. *Wood,* 247 Pa. St. 545.

Pedestrians who are crossing the street close to a standing street car, as well as passengers of the car, are entitled to rely on the obedience by motorists of regulations of this kind, and can avail themselves of the benefit thereof in case of a collision: *Meenach* v. *Crawford* (Mo.) 187 S. W. 879; *Kolankiewiz* v. *Burke,* (N.J.) 103 Atl. 249. And a person assisting a passenger on or off a car, though not himself a passenger, may invoke the protection of the statute: *Baker* v. *Close,* 137 N. Y. App. Div. 529.

The Quebec Motor Vehicles Act contains a provision similar to section 15 of the Ontario Act. It was there held that both the owner and chauffeur are liable for a violation of the provisions of this section: *Carson* v. *Raifman,* 27 Que. K. B. 337.

The driver of an automobile who does not remain at rest behind a stationary car, at a distance of not less than ten feet, as required by a city by-law, and who injures a passenger descending from a street car, is liable for the consequences of the accident. On the other hand, a passenger who descends from a car without looking around to see whether or not the road is clear to cross the street without danger, is guilty of a serious fault. In such case the accident is due to common fault: *Evans* v. *Lalonde* (1915), 47 Que. S. C. 374.

While the driver of an automobile is bound to anticipate that a standing car is receiving or discharging passengers who may pass along the street in front of his machine, the situation is different in the case of a moving street car. The operator of a motor vehicle is not bound to anticipate that a person will jump from a moving car in front of his vehicle, and, hence, in the absence of statute or municipal regulation affecting the question, when a passenger leaps from a moving street car in front of his vehicle, he is not chargeable

with negligence merely because of his failure to stop or slacken the speed of his machine when meeting or passing the street car: *Brown* v. *Brashear,* 22 Cal. App. 135; Huddy, 524.

Nor is a driver of an automobile bound to assume that the street car will stop elsewhere than at the usual stopping place. Where a motorman stopped the car at a point between two stopping places to allow a passenger to alight, and she was struck by an automobile following the car, while walking from the car to the sidewalk, a jury acquitted the driver of the automobile of negligence: *Ellis* v. *Hamilton Street R. W. Co.* (1920), 19 O. W. N. 226.

A policeman was riding on a street car looking for a team, and when the car was on a switch or turn or near the end of it, he saw the team he was looking for and told the motorman to stop the car. The car stopped and the policeman stepped off backward. Before stepping off he looked up and down the street and saw nothing coming, then stepped down and told the motorman to go ahead, and before the car started he was struck and knocked down by a motor car from which he heard no signal. He was standing as close as he could to the car from which he had alighted and had been on the ground only from four to ten seconds when he was hit. It was held that it could not have been ruled as a matter of law that the plaintiff was negligent. It was further held that the jury might have found that the defendant had violated that part of the Massachusetts Statute, 1909, c. 534, which resembles our statute except that it compels the driver of a motor vehicle to come to a full stop only where "it be necessary for the safety of the public": *Hartnett* v. *Tripp* (1918), 231 Mass. 382.

Section 16 of the Motor Traffic Regulation Act of British Columbia provides: "Every driver of a motor going in the same direction as and overtaking a street car, which is stopped or is about to stop for the purpose of discharging or taking on passengers, shall, when such car stops, also stop such motor at a distance of at least 10 feet from said car, and shall keep such motor at a standstill until the said car has been again set in motion, and all passengers who have alighted shall have reached the side of the highway or otherwise gotten safely clear of said motor."

The Court of Appeal held the statute does not apply where a street car having been back from a cross street to a

point preparatory to proceeding forward on its journey is standing still. Galliher, J.A., puts it this way: "The car when the passengers would be taken on would proceed in the same direction as the motor, and if the jury found it was standing still at the point where passengers were taken on, I think it would be in no different position to what it would have been had the car been proceeding in the same direction as the motor, and had stopped to take on passengers, if it were not for the particular wording of the section. The Act says: 'going in the same direction as and overtaking a street car which is stopped,' and further on states that 'such motor shall be kept at a standstill until the car has *again* been set in motion.' This language seems to point to the fact that the car must be previously in motion in the same direction as the motor, and therefore, the Motor Act does not apply to this branch of the case."

Macdonald, C.J.A., said: "Unless I can construe the words, 'going in the same direction' as capable of being read 'about to go in the same direction,' then the section does not, in my opinion, apply to the facts of this case": *Holmes* v. *Kirk & Co.* (1920), 53 D. L. R. 53.

PASSING STREET CAR ON LEFT.

15*a*. No person in charge of a motor vehicle overtaking a street car or the car of an electric railway, operated in or near the centre of the travelled portion of the highway, which is stationary or in motion, shall pass on the left-hand side of such car, having reference to the direction in which such car is travelling. 8 Geo. V., c. 37, s. 7.

While section 15 applies to a street car only while it is "stationary for the purpose of taking on or discharging passengers," and contemplates motor vehicles passing on the right hand side of the street car, this section prohibits a motor vehicle passing a strect car on the left-hand side whether such car is "stationary or in motion."

The object of the legislation is quite apparent. A motor vehicle, or other vehicle, coming from the opposite direction may be hidden from the view of the driver of an automobile following a street car, by the street car; and if such driver

should turn to the left in an attempt to pass the street car the danger of collision would be imminent.

It has been held that to pass a street car on the wrong side is negligence apart from any statutory prohibition: *Kelly* v. *Schmidt,* 142 La. 91.

The fact that an automobile passes on the wrong side of a street car discharging passengers has a material bearing on the rights of the parties. In the first place, the violation of the law of the road is considered to constitute a *prima facie* case of negligence which calls upon the driver to explain his conduct in violating the rule. Then, again, on the question of contributory negligence of the person injured, it is generally held that one is not required to anticipate a violation of the law of the road by the driver of an automobile, and that the pedestrian is not required to look out for motor vehicles which may be proceeding on the wrong side of the street with the same degree of vigilance as for vehicles proceeding in accordance with the recognized custom of travel: Huddy, 527-8.

PASSING HORSES ON HIGHWAY.

16.—(1) Every person having the control or charge of a motor vehicle shall, when upon a highway and approaching any vehicle drawn by a horse, or a horse upon which any person is riding, operate, manage and control such motor vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of such horse and to ensure the safety and protection of any person riding or driving the same, and outside the limits of any city or town shall not approach such horse within one hundred yards or pass the same going in the opposite direction at a greater rate of speed than fifteen miles an hour, and if going in the same direction shall signal his desire to pass and give the rider or driver an opportunity to turn out so that he may be passed with safety, and if any such horse going in the opposite direction appears to be frightened or if such person is signalled so to do, he shall stop such motor vehicle, including the motor, and shall remain stationary so long as may be necessary to allow such rider or driver to pass or until directed

by him to proceed, and in case any animal ridden or driven by such rider or driver appears to be frightened, such person and the occupants of the motor vehicle shall render assistance to such rider or driver. 2 Geo. V., c. 48, s. 16; 7 Geo. V., c. 49, s. 11.

(2) A person having the control or charge of a motor vehicle shall not sound any bell, horn or other signalling device so as to make an unreasonable noise, and an operator of any motor vehicle shall not permit any unreasonable amount of smoke to escape from the said motor vehicle, nor shall such operator at any time, by cutting out the muffler or otherwise, cause such motor vehicle to make any unnecessary noise. 3-4 Geo. V., c. 52, s. 5.

This somewhat prolix and involved section may be thus analyzed: Every person operating a motor vehicle on a highway and meeting any horse, whether ridden or driven, shall:—

(1) Use every reasonable precaution to prevent frightening such horse and to ensure the safety of the rider or driver;

(2) Not approach such horse within 100 yards or pass the same, going in the same direction, at a speed of more than 15 miles per hour. This does not apply to a city or town.

(3) When he overtakes a horse and desires to pass he shall signal the rider or driver and give him an opportunity to turn out, etc.;

(4) When meeting a horse which appears to be frightened, or if the rider or driver signals him to do so:—

(*a*) Stop his motor vehicle, including the motor;

(*b*) Remain stationary as long as may be necessary to allow the rider or driver to pass, or until directed by him to proceed;

(*c*) Render assistance to the rider or driver. This duty is incumbent on the occupants of the motor as well as the operator.

The frightening of a horse ridden or driven along a public highway caused by encountering a vehicle does not, of itself, raise any inference of negligence on the part of the driver of the vehicle. The law contemplates that all kinds of conveyances may use the highway with equal right, and, so long

as the driver of a lawful vehicle observes the laws of the road, and proceeds with the degree of care to be expected of an ordinary careful and prudent person in such situation, he cannot be held liable for an injury caused by the fright of the animal at his appearance or at that of his conveyance: *Hall* v. *Compton,* 130 Mo. App. 675.

Automobiles are constantly driven along streets past horses without frightening them, and if the appearance and movement of a particular automobile and the noise incident to its operation are in no way unusual, it is not *per se* a wrongful act to operate it in proximity to a horse, so long as the horse exhibits no fright: *O'Donnel* v. *O'Neil,* 130 Mo. App. 360.

The plaintiff's team was injured by being frightened by the operation of the defendant's automobile. It appeared that the team pulled back and escaped immediately on the stopping of the automobile, and it did not appear that, had the defendant arrested the sparker as soon as he saw, or might have seen, that the team was frightened, it would have been in time to have obviated their escape, or that he could have done anything to have stopped their fright after he might have discovered it. It was held he was not guilty of negligence: *House* v. *Cramer,* 134 Iowa 374.

It is no justification for the failure of the driver of an automobile to look ahead and observe the fright of horses approaching that it is necessary for him to keep his eyes and attention fixed on the track of the road to enable him to guide the machine past the horses safely and to avoid holes and other obstacles: *McIntyre* v. *Orner,* 166 Ind. 57.

Where a statute simply requires the driver of a machine to stop when signalled by the driver of a horse, that does not require the engine of the machine to be stopped; whether it should be stopped depends on the circumstances of each particular case: *Mahoney* v. *Maxfield,* 102 Minn. 377. It will be noticed that our statute requires both the motor vehicle and the motor to be stopped.

Where the driver of an automobile saw, or by ordinary care could have seen, a horse and vehicle on the highway ahead of him, and he was required by statute to give warning of his approach, and to use every reasonable precaution to insure the safety of the occupants of the vehicle, and there was evidence that he did not give any warning, that he drove the machine at a high rate of speed, and that he did nothing toward respecting the safety of the persons in the vehicle,

except to swerve the machine to pass, it was held that such evidence was *prima facie* proof of negligence: *National Casket Co.* v. *Powar,* 137 Ky. 156.

Failure to stop a motor vehicle upon signal by the driver of a horse was held sufficient evidence to sustain a verdict for the plaintiff, even though other grounds of negligence were not sustained: *Brown* v. *Thorne,* 61 Wash. 18; *Trombley* v. *Stevens-Duryee Co.,* 206 Mass. 516.

The statute gives the driver of the motor vehicle no option as to whether or not he shall stop. He cannot speculate as to whether the horse is gentle or wild, or whether it may become frightened or not, but if signalled, he must stop his machine: *Cohen* v. *Meader,* 119 Va. 429.

The signal to stop need not be given by the person actually driving the horse, but may be given by any occupant of the vehicle: *State* v. *Goodwin,* 169 Ind. 265.

The failure of the driver of a horse to give a signal to stop does not necessarily permit the driver of a motor vehicle to proceed. The latter is bound to exercise reasonable care to avoid injury, and if due care requires the stopping of the motor vehicle, negligence may be charged against him. In other words the enactment of the statute does not abrogate the duty of stopping which existed theretofore. And the failure of the driver of the horse does not necessarily constitute contributory negligence: *Walkup* v. *Beebe,* 139 Iowa 375; as where the restiveness of the horses requires all the owner's attention, and the situation might have been seen by the operator of the car: *Strand* v. *Automobile Garage Co.,* 136 Iowa 68.

Where the driver of a motor vehicle has stopped to enable a horse to pass, he must continue to exercise reasonable care to avoid injury. Thus in *Knight* v. *Lanier,* 69 N. Y. App. Div. 454, the driver of the automobile started his engine while the horse was being driven past, and the horse became frightened and caused injury. The Court said a question of fact was clearly presented for determination whether under all the circumstances his conduct was characterized by ordinary care.

The Saskatchewan statute prohibits the driver of an automobile approaching within 100 yards of a vehicle driven by a horse, or pass the same going in the same or opposite direction at a greater speed than six miles per hour, and if the horse appears frightened the person in control of the auto-

mobile shall reduce its speed and shall not proceed further except to avoid accident or until the horse appears to be under control. In *Stewart* v. *Steele* (1912), 6 D. L. R. 1, Lamont, J., said it was the duty of the driver of an automobile when he sees that horses which he is approaching are frightened, to stop his car and, if necessary, close down his engine until they are under control, or have passed, or until the danger of accident has been overcome. "To continue to advance towards horses giving indications of being in a frightened condition, even if their owner is at their heads (unless the owner signals the owner of the car to approach), is not exercising that care which a cautious and prudent man should exercise under the circumstances. Furthermore, the non-observance of a duty imposed by statute is in itself evidence of negligence." And see *Lubier* v. *Michaud,* 38 Que. S. C. 190.

In *Campbell* v. *Pugsley* (1912), 7 D. L. R. 177 (N.B.), it was held that where a motor vehicle meets a vehicle drawn by a horse, and the horse shews fright, it is the duty of the driver of the motor vehicle to stop his car and take such further precautions as prudence suggests, and this irrespective of the statute; citing *Christy* v. *Elliott,* 216 Ill. 31, where it is said: "Independently of such a statute or the giving of a signal, the automobilist should stop when he sees that he is frightening a horse by proceeding."

In *Bradshaw* v. *Coulin* (1917), 40 O. L. R. 494, the trial Judge charged the jury: "If a man knows he is approaching a horse, or has reasonable grounds from which he should know he is approaching a horse, he must drive at seven miles an hour within 100 yards; but if he has no knowledge whatever and could have no knowledge whatever, then I think I shall instruct you he is not bound by that seven miles an hour until the point where he does know or could know that a horse was approaching."

The Appellate Division held this was misdirection. "The language of the Legislature is explicit and positive—it does not say 'knowingly,' or 'with reasonable ground to apprehend,' nor do I find any conflict between section 16 and section 11, or other sections of the Act. Reasonable or unreasonable, wise or unwise, if the enactment is clearly expressed, it is the law." Per Lennox, J.

"Where the Legislature leaves anything to reasonable ground of belief, it says so as in section 11 (2). Where the

prohibition is clear, a *mens rea* is not necessary even in criminal matters: *Reg.* v. *Prince,* L. R. 2 C. C. R. 154. Moreover, a consideration of the purpose and object of the legislation will, I think, make it clear that there could have been no intention on the part of the Legislature to rest the duty of going at not more than seven miles per hour upon the knowledge or reasonable belief of the operator of the motor vehicle." Per Riddell, J. Meredith, C.J.C.P., dissented, holding that section 16 (1) applies to the ordinary case of drivers approaching and seeing each other—not to the case of one who does not see.

The corresponding section of the Quebec Act is practically the same as section 16 of our Act. In a Quebec case it was held that it is the duty of the driver of a motor vehicle to stop on a signal from a person approaching and driving a horse, although the horse does not at the time of the signal appear to be frightened. The driver of the motor vehicle said he did not see the driver of the carriage raise his hand as a signal, although the evidence clearly shewed that such a signal was given. "The appellant should have specifically looked to see if the hand of the driver was raised. That duty was incumbent upon him, and he evidently did not take any special pains to ascertain if the driver's hand was raised or not": *The King* v. *Hyndman,* 7 Can. C. C. 469.

The provisions of sub-section (2) are evidently intended to apply to horses on a public highway. It is very seldom that a pedestrian can be said to have been injured by a noise of a motor vehicle. In fact, the duty of a driver is to sound a warning so that pedestrians may escape injury. The statute appears to cast no special duty on the person operating a motor vehicle to persons or animals in fields adjoining the highway. The extent of his obligation in this respect is to refrain from wilful or wanton conduct which would cause fright: *Walker* v. *Faelber,* 171 Pac. 605. But where upon the approach of an automobile, the driver of a horse leads it off the highway on private adjoining lands in order to avoid its fright, it seems that the same rules apply to the conduct of the driver of the machine as would apply if the horse had remained in the public highway: *Harroun* v. *Benton,* 197 Ill. App. 138.

Where a motor vehicle overtakes a horse and passes it, and the motor vehicle is swung back into the centre of the road sooner than due caution requires, and thereby comes so close

to the horse's head as to frighten it and cause injury, negligence may be imputed to the chauffeur: *Delfs* v. *Dunshee,* 143 Iowa 381. So if the road is narrow where a horse is overtaken by the driver of an automobile, and the latter attempts to pass and injury results, the driver of the automobile cannot complain if the Court or jury finds him guilty of negligence: *Gurney* v. *Piel,* 105 Me. 501.

Although the driver of a horse followed by an automobile is required "as soon as he can go to the right in order to leave a free passage on the left," nevertheless, if he does not leave the automobile sufficient space, and the chauffeur attempts to pass the carriage, he does so at his own risk, and is liable in case of collision: *Menard* v. *Lussier,* 50 Que. S. C. 159.

"We think the statute was not intended to impose the absolute duty upon the driver of an automobile to stop his machine because a team in front, going in the same direction, appears to be frightened, but under those circumstances it is left to the trial jury to say whether under all the circumstances of the case the driver of the automobile has been guilty of negligence. Doubtless the Legislature took into consideration the hardship of requiring the driver of an automobile to stop his car merely because a team in front of him appears to be frightened. The automobile, of course, travels faster than vehicles drawn by horses, and if the statute applied, it would prevent the driver of an automobile from passing the slower vehicle. On the other hand it is perfectly reasonable to require the driver of a machine, when meeting another traveller driving a team, to stop and let the team pass. The Legislature doubtless had this distinction in mind in failing to put into the statute a positive requirement that an automobile overtaking another kind of vehicle should stop, for such a requirement would impede travel almost to the extent of denying the driver of an automobile the use of the road. The lawmakers evidently intended to omit any definite requirement applicable to a state of facts such as is shewn in this case, so that the question of negligence or due care could rest upon settled principles on that subject. This case should have been submitted to the jury on the question whether appellant exercised ordinary care to avoid frightening the team, without giving the jury the statute which imposed the absolute duty of stopping until the team got out of the way": *Fleming* v. *Oates,* 122 Ark. 28.

A. was proceeding along a highway with two harnessed horses but no vehicle—riding one horse and leading the other. The defendant's automobile came along the highway behind the horses. When approaching the horses, but before they were overtaken, they began to rear and plunge, and one of them fell upon A., and he died as a result of his injuries. Britton, J., tried the case without a jury, and he found negligence on the part of the chauffeur in that he did not keep such a watch over the horses as to notice they were frightened at the car and its approach—and so that he could keep the car away until the horses were quieted or the deceased out of danger. Further there was negligence in not stopping the motor, as well as the car, when the car was being stopped in such close proximity to the horses ahead. He was also guilty of negligence in not keeping the horses in view and being ready to assist in caring for and steadying the frightened horses: *Ashick* v. *Hale* (1911), 3 O. W. N. 372.

See further cases noted under section 4 of the Highway Travel Act.

"It is possible that a horse be of such wild and vicious nature that one knowing its propensities would be charged with contributory negligence if he drove the animal along the highway used by motor vehicles. The question depends on the degree of the viciousness and its actions when confronted by an automobile. The contention that it is contributory negligence on the part of the owner of a horse, of ordinary gentle and tractable habits, to use him on the highway, simply because the animal occasionally becomes frightened at an automobile, cannot be sustained. As bearing on the question of negligence, evidence should be received as to the character of a horse alleged to have been frightened by a motor vehicle. Thus, it may be shewn that the horse in question would become frightened and unmanageable at the sight of an automobile and would turn and run whether or not the machine made a noise": Huddy, 687-8; *Cohen* v. *Meader,* 119 Va. 439.

In an action for damages caused by the alleged frightening of a horse by an automobile, it has been held that a witness acquainted with the defendant's automobile may testify that it was exceedingly noisy and was the loudest machine he ever heard: *Fletcher* v. *Dixon,* 113 Md. 101.

Evidence as to the comparative amount of noise made by different makes of automobiles, based upon comparisons made

by the witness, is held to be properly excluded where there is no proof of the condition of the machines with which the test was made: *Porter* v. *Buckley,* 147 Fed. 140.

The statute requiring operators to stop when signalled by one driving a restive horse, does not relieve them from the duty of stopping without such signal on seeing that such person is being imperilled by the fright of his horse. This obligation grows out of the general provisions to prevent frightening animals, and to operate so as to "insure the safety of such person or animal," and so as to preserve the lives and safety of the public: Babbitt, par. 1174.

If a horse shews no sign of fear on approach, the driver of an automobile is justified in proceeding (if no signal to stop is given), and will not be liable if the horse unexpectedly becomes unruly when it is too late to avoid the injury, by stopping the machine: *Hall* v. *Compton,* 130 Mo. App. 675.

To stop his machine, where no signal is given, may not always be the wisest thing to do when the driver discovers that a horse is frightened. It may be more prudent to get by with his automobile as quickly as possible to remove the cause of fright: *Gue* v. *Wilson,* 87 S. C. 144; *Webb* v. *Moore,* 136 Ky. 708. It will be noticed that the Ontario statute requires the motorist to stop his motor vehicle if the horse "appears to be frightened," whether a signal is or is not given.

It may be negligence to drive so close to a horse (in this case within two feet), as to cause it to run away: *Trombly* v. *Stevens-Duryea Co.,* 206 Mass. 516. So where the automobile is driven so close to a horse as to splash water on him and frighten him: *Pfeiffer* v. *Radke,* 144 Wis. 430. It was held evidence of negligence where the defendant's car emitted clouds of smoke and so frightening horses: *Nason* v. *West,* 61 N. Y. App. Div. 40.

PASSING FUNERAL PROCESSION.

17. The driver of a motor vehicle upon any highway outside the limits of a city shall upon meeting a funeral procession stop his vehicle, including the motor, or where practicable shall turn out into an intersecting highway or lane until the funeral procession has passed. 2 Geo. V., c. 48, s. 17; 7 Geo. V., c. 49, s. 12.

A statute provided that whenever any persons shall *meet* each other on any road, each shall turn to the right of the travelled part of the road. This was construed to mean only persons approaching each other on the same road. Persons cannot be said to meet each other where they are both travelling in the same direction and one overtakes the other: *Lovejoy* v. *Dolan,* 64 Mass. 495.

The object of section 17 is clear. To pass a number of horse-drawn vehicles in close procession, where the frightening of one might mean injury to many, requires more care and prudence than the case of passing the ordinary horse-drawn vehicle. It will be noticed that the section makes no provision for a motor vehicle overtaking a funeral procession, and the provision that he "shall turn out into an intersecting highway or lane until the funeral procession has passed," makes it clear it was not intended so to provide. While the driver of a motor vehicle attempting to pass an overtaken funeral procession might not be liable to a penalty under section 29, it does not follow he would not be guilty of negligence in so doing, if injury should result. It would be for the Court or a jury to say whether, under the circumstances, the driver was guilty of negligence.

DUTY IN CASE OF ACCIDENT.

18. If an accident occurs to any person on foot or horseback, or in a vehicle, or to any horse or vehicle in charge of any person, owing to the presence of a motor vehicle on a highway, the person in charge of such motor vehicle shall return to the scene of the accident and render all possible assistance and give in writing to any one sustaining loss or injury his name and address, and also the name and address of the owner of such motor vehicle, and the number of the permit. 2 Geo. V., c. 48, s. 18, 7 Geo. V., c. 49, s. 13.

"Owing to the presence of a motor vehicle on a highway": see notes to section 23, *post.*

In *Henderson* v. *Northam,* 16 Pac. 1044, it was held that the fact that the driver of a motor vehicle violates the statute by not stopping after the accident and giving his name to one injured is not to be considered on the question of negligence

in causing the accident. But in *Ex p. Kneedler,* 243 Mo. 632, it was said that flight may be evidence of guilt. The fact that the driver does stop and disclose his identity is, of course, no evidence of guilt, but rather of innocence: *State* v. *Davis,* 108 Mo. 667. Perhaps a better statement of the law would be, that where one does a duty incumbent upon him by statute, no inference of either guilt or innocence should be drawn therefrom.

Where the owner of a motor vehicle is prosecuted under section 24 for a violation of the provisions of section 18, the intent of the accused is a material element of the offence. Thus, where the accused after collision on the highway waited for a considerable time at his own automobile which was disabled in the accident, and then sent another man back to the place of the collision with instructions to disclose his identity, his conduct may be a sufficient compliance with the statute, although the agent fails to make the disclosure: *Commonwealth* v. *Horsfall,* 213 Mass. 232.

It is a good defence to a prosecution that the accused did not know there was an accident. Knowledge may arise where the accused has actual knowledge thereof, or where the circumstances are such as to cause a reasonable man to believe that injury would flow from the accident: *Woods* v. *State,* 73 So. 129 (Ala. App.); *People* v. *Curtis,* 217 N. Y. 304.

To prove knowledge evidence may properly be given shewing the extent of the injuries to a person in an automobile collision, as bearing upon the seriousness of the accident and the probability that it ought not to have escaped the notice and attention of the accused: *People* v. *Curtis, supra.*

Where a motor vehicle driven by the accused, in attempting to regain the centre of the highway, grazed the wheel of a buggy, overtaken and passed, with sufficient force to loosen two spokes, and it appeared at the trial that neither the accused or any person in the motor vehicle knew or had reason to know that such injury had resulted to the buggy, the conviction was quashed: *Robertson* v. *McAllister,* 5 D. L. R. 476; 19 Can. C. C. 441, where the question of *mens rea* is discussed.

The statute would seem to require that the driver of the motor vehicle shall return to the scene of the accident forthwith. This is the inference to be drawn from the provision that he is to "render all possible assistance." If he drives on several miles before he stops, he may be convicted of the offence:

People v. *McLaughlin*, 100 Misc. (N. Y.) 340. A situation may be created whereby an immediate return is impossible, for instance, where the accused is himself injured in the accident. *Ib.*

But the fact that the person injured was unconscious, and no other person was present to whom the accused might report, does not justify him at once leaving the scene without waiting for the arrival of a person to whom the information could be given. In *State* v. *Sterrin* (N.H.) 98 Atl. 482, the Court said: "It is apparent that the Legislature could not have intended to make it easier for the operator of a car to escape detection in the case of a severe injury like the one here inflicted than where the injury was trifling. The object was to secure information in cases where identification might be difficult if the statute was not observed. Nor is it true that this intent is not fairly expressed by the language used. The statute was that the person causing the injury must return to the place of the accident and there remain for a sufficient time to give 'proper persons' a reasonable opportunity to demand of him the information which the statute requires that he should give upon such demand. It is manifest that what conduct will or will not amount to a compliance with this obligation must vary with the varying circumstances of the individual cases. If there could be a case where it was evident that no person who could make the demand was likely to appear, and therefore the operator of the car could be excused for not waiting for such appearance, the situation in this case was not one to warrant any such conclusion. The place where the collision occurred was a city street, and the time shortly before six o'clock in the afternoon. There was every reason to believe that someone would shortly appear to whom the required information could be given if demanded. It was not even shewn that the defendant went away because he thought there was not likely to be an opportunity to give information. On the contrary his own testimony establishes the fact that he left to avoid being identified as the person responsible for what had occurred. The evidence, if believed, proved that the statute had been violated, and the case was properly submitted to the jury."

It will be noticed that our statute requires the information, *i.e.*, name and address of the driver, the name and address of the owner, and the number of the permit (marker), in writing; and this must be given whether demanded or not.

Where the accident is the result of a collision between two automobiles, and both are injured, or the occupants of both are injured, there would seem to be a duty on the driver of each automobile to give the information to the other.

Where the driver of an automobile knows there has been an accident there is an obligation imposed upon him to give the information required by the section. He cannot escape liability by taking the assurance of someone else that no injury has occurred: *People* v. *Curtis* (1919), 225 N. Y. 519, 523.

LETTING CARS FOR HIRE.

18*a*. No person shall hire or let for hire a motor vehicle unless the person by whom such motor vehicle is to be driven is a person licensed to drive a motor vehicle as required by this Act, or is a person to whom a permit has been issued pursuant to section 3 of this Act, or is a person to whom a certificate of competency has been issued by the Minister of Public Works and Highways.

18*b*.—(1) All persons who buy, sell, wreck or otherwise deal in second-hand motor vehicles shall keep a correct record of all motor vehicles bought, sold or wrecked and of such information as will enable such motor vehicles to be readily identified, and shall transmit weekly to the Department of Public Works and Highways on forms furnished by the Department, a statement showing all motor vehicles bought, sold or wrecked by him during the week contained, and such information with reference thereto as may be required by the Department.

(2) No person shall buy, sell, wreck or otherwise deal with any motor vehicle where the manufacturer's serial number or similar identifying mark has been obliterated or defaced or is not readily recognizable.

(3) Where any motor vehicle is placed in the possession of any person who buys, sells, wrecks or stores motor vehicles and the same remains in his possession for more than two weeks without good

reason, such person shall forthwith, upon the expiration of the said period of two weeks, make a report thereof to the Minister of Public Works and Highways. 9 Geo. V., c. 57, s. 4.

These sections are new and do not appear to have been adjudicated upon. The object of section 18*b* was to prevent the sale, or other disposal, of stolen cars.

"*Hire*": The terms "hiring" and "letting" are used to designate the lending of property, other than money, for a compensation: *Kenney* v. *Hynds,* 49 Pac. 403. One of the distinguishing characteristics of hiring is that it is never gratuitous: *Learned* v. *Fowler,* 109 Ala. 169. "Hire" does not necessarily mean a stipulated reward. It was held that a carriage plies for hire if it carries a notice saying it is placed at the disposal of the public free of charge, but that voluntary contributions to support it will be welcomed: *Cocks* v. *Mayner,* 70 L. T. 403.

"*Deface*": In a statute fixing a penalty for altering or defacing a brand put on cattle, the words "altering" and "defacing" are not synonymous terms. "Defacing" would be obliterating; "altering" would be changing from what it was before into a different brand. Where a letter was added to the brand this was held to be an "altering," but not a "defacing": *Linney* v. *State,* 6 Tex. 1.

In *Harris* v. *Ellis* (1845), 2 C. B. 295, it was held if one writes on a driver's license anything, whether true or false, other than the particulars required by the Act regulating the licenses, he defaces it.

"*Obliterate*": In the law of wills pasting over a piece of paper is an obliteration: *Ffinch* v. *Combe,* 1894, P. 191. To "obliterate" is to blot out; to "cancel" is to cross out: *Townsend* v. *Howard,* 86 Me. 285. But there may be an obliteration where lines are drawn through a writing, but not so carefully that it cannot be read: *Re Evans,* 58 Pa. 238.

"*Second-hand*": Second-hand is a general term and refers to articles that have been sold and used, either one or many times: *Texas* v. *Wilson,* 46 Civ. App. 38.

"*Wreck*": Persons known as "house-wreckers," buy buildings and demolish same for the use of the materials: *Morris* v. *Laurie,* 103 N. Y. S. 213.

In an agreement to sell "one re-built engine" it was held that a "re-built engine" is a second-hand engine which

has been made as good as possible, and practically as good as new—that it is not a particular species of engine: *New Hamburg Mfg. Co.* v. *Webb* (1911), 23 O. L. R. 414.

LIABILITY OF OWNER.

19. The owner of a motor vehicle shall be responsible for any violation of this Act or of any regulation prescribed by the Lieutenant-Governor in Council, unless at the time of such violation the motor vehicle was in the possession of some person other than the owner without his consent, express or implied, not being a person in the employ of the owner, and the driver of a motor vehicle not being the owner shall also be responsible for any such violation. 2 Geo. V., c. 48, s. 19; 4 Geo. V., c. 36, s. 3; 7 Geo. V., c. 49, s. 14; 8 Geo. V., c. 37, s. 8.

This section has undergone various changes, and, in considering the numerous decisions on the liability of an owner of a motor vehicle, it is necessary to bear these changes in mind.

As the section stood in the R. S. O. 1914, it was:

> "The owner of a motor shall be responsible for any violation of this Act or of any regulation prescribed by the Lieutenant-Governor-in-Council."

In 1914 this was amended by adding thereto:—

> "Unless at the time of such violation the motor vehicle was in the possession of a person, not being in the employ of the owner, who had stolen it from the owner": 4 Geo. V. c. 36, s. 3."

In 1917 the amendment of 1914 was struck out and the following substituted therefor:—

> "Unless at the time of such violation the motor vehicle was in the possession of some person other than the owner without his consent, express or implied, not being a person in the employ of the owner": 7 Geo. V. c. 49, s. 14.

In 1918 the section was further amended by adding at the end thereof the following words:—

> "And the driver of a motor vehicle not being the owner shall also be responsible for any such violation": 8 Geo. V. c. 37, s. 8.

The license number of the automobile coupled with evidence that the defendant held the license, is *prima facie* proof that the defendant was the owner, and that it was still his property, the records shewing no transfer: *Ferris* v. *Sterling,* 214 N. Y. 249; *Patterson* v. *Millican,* 12 Ala. App. 324.

Where a motor truck bore the name of the defendant company it was held this was *prima facie* evidence of ownership in the defendant company, and that the person in charge thereof at the time of the accident was in the employ of the defendant company: *Holzheimer* v. *Lit Bros.,* 262 Pa. 150.

A married woman carried on the business of teaming on her separate account, her husband without a salary helping around doing what he could working for her as a teamster. All the real and personal estate belonged to the wife and was registered in her name. The husband bought an automobile under a conditional sale agreement in his own name, but it was not registered in his name or in his wife's name. Subsequently he gave a mortgage on the automobile to secure a debt owing by the wife, and this mortgage was paid off from the receipts of the business. The wife's son, while driving the automobile, ran into and killed a pedestrian. On these facts being shewn, in an action for damages against the wife, the trial Judge ordered a verdict for the defendant on the ground that there was not sufficient evidence that the wife owned the car. The full Court held there was sufficient evidence to submit to the jury as to the ownership of the car: *Goldrick* v. *Lacombe,* 231 Mass. 397. See also *Brown* v. *New Haven Taxicab Co.,* 92 Conn. 252.

In Ontario it has been held that a conditional vendor, reserving title to the motor vehicle until paid for, is not the "owner" within this section, so as to incur a statutory liability for personal injuries sustained by the mismanagement of the car while under the control of the conditional purchaser or his servant: *Wynne* v. *Dalby,* 29 O. L. R. 62; 30 O. L. R. 67. The law seems to be otherwise in Quebec: *Cote* v. *Pennock,* 51 Que. S. C. 537.

The following decisions were on the section as it stood before the amendment of 1914: *Mattei* v. *Gillies* (1908), 16 O. L. R. 558. "I am inclined to believe that, having regard to the provisions of the Act, as to registration of the owner, the carrying of a number on the machine for the purpose of

identification, and the permit granted under these conditions, as between the owner and the public, the chauffeur or driver is to be regarded as the *alter ego* of the proprietor, and that the owner is liable for the driver's negligence in all cases where the use of the vehicle is with the sanction or permission of the proprietor. In driving the motor he is within the ostensible scope of his employment, and the liability will remain by virtue of the statute, and this even though the driver may be out on an errand of his own": Per Boyd, C.

Smith v. *Brenner* (1908), 12 O. W. R. 9: "I think that the meaning of the statute is that every owner of a motor vehicle, having obtained a permit, must see to it that his motor shall be kept and managed as the statute provides—that he, the owner, shall either manage it himself and keep within the Act, or shall see to it that those who get possession of it in any way shall obey the rules laid down by the Act. And this he must do at his peril. If he place the vehicle in the hands of a chauffeur, or lend it to a friend, he is putting it in the power of a servant or friend to manage it in a manner which may be dangerous; and he must assure himself of the capacity and prudence of servant or friend at his peril": Per Riddell, J.

Verral v. *Dominion Auto Co.* (1911), 24 O. L. R. 551: "The provisions of the special legislation indicate pretty clearly that the mind of the Legislature was to abrogate to some extent the common law rule that the master of a vehicle is exempt from responsibility if the servant does an injury with the master's vehicle when, outside of the duties of his master's employment, he is out at large on an errand or frolic of his own": Per Boyd, C.

Bernstein v. *Lynch* (1913), 28 O. L. R. 435: The chauffeur had taken the car out upon the owner's business, but, when that was done, instead of taking the car back to the garage, he drove it in another direction, apparently for his own purpose. The jury found that the chauffeur was acting "within the usual scope of his employment in driving the car when the collision took place." The Court held that whether the act was done in the course of his employment was for the jury.

In *Lowry* v. *Thompson* (1913), 29 O. L. R. 478, the only evidence as to ownership was the number on the car. The evidence of the defendant was that his car was in the garage on the evening of the accident. Riddell, J., said: "With the

ordinary presumption against crime, the evidence adduced was, in my view, such as to justify the jury in finding that the car was that of the defendant. In *Trombley* v. *Stevens-Duryea Co.*, 206 Mass. 516, the same point came up for adjudication in the Supreme Court of Massachusetts. The whole evidence as to the ownership of the car was that of a third party who testified as to the registration tag on the offending vehicle and the certificate of registration in the name of the defendant. The Court said: 'It could not be operated lawfully upon the highway unless duly registered by the owner or person in control, and until rebutted, the plaintiff could rely on the presumption that the requirements of the statute had been followed.'"

The owner of a motor vehicle which is stolen, and when being driven by the thief, injures another, owing to the negligence of the thief—there being no negligence on the part of the owner—is not, by reason of section 19, or any other provision of the Act, liable for damages. Clute, J., after referring to the preceding sections, said: "The meaning, I think, of the preceding sections is, that it was necessary to indicate some person who would be responsible for the violation of the Act, and the owner is named as such person—not to create a liability against such owner for the act of one over whom he had no control. . . . I agree with what my brother Riddell says in this respect in *Lowry* v. *Thompson* at p. 488: 'All that the section does is to shift the onus, not impose a liability'": *Cillis* v. *Oakley* (1914), 31 O. L. R. 603.

These last mentioned cases were all discussed, in appeal, in *Downs* v. *Fisher* (1915), 33 O. L. R. 504, the injury having occurred in 1913. The owner had placed his car in a garage for repairs, and a servant in the garage, thinking the car was there for demonstrating, took it out and operated it so negligently as to cause the injury complained of. It was held that the owner was liable. Riddell, J., said the amendment of 1914 "was passed in the view that the owner was liable for the negligence of any one in charge of his car, and was intended to except the case of the car being in the possession of a thief, unless that thief should be in the owner's employ."

In *Hirshman* v. *Beal* (1916), 38 O. L. R. 40, the facts were somewhat similar to those in *Downs* v. *Fisher*, but the injury occurred after the amendment of 1914. Here the foreman of the garage took the car out of the garage to

test it, and having tested it drove it for his own purpose. The Court held the car was not stolen and the owner was liable.

Apart from the provision of the statute, as it existed before the amendment of 1917, there would appear to be no liability imposed upon an owner in such cases as the last two: *McCabe* v. *Allan,* 39 Que. S. C. 29; *B. & R. Co.* v. *McLeod,* 18 D. L. R. 245.

Under the Manitoba Act, 5 Geo. V. c. 41, s. 63*a*, it has been held that the owner of a motor car driven by his daughter is not liable unless the injury was caused by the negligent or wilful act of the driver: *McIlroy* v. *Kobald* (1917), 35 D. L. R. 587.

In an Alberta case, where the statute is similar to the Ontario Act, it was held that the sound rule seems to be that the child of an owner of an automobile is not the agent of the owner in the use of the car where such child is driving the machine for its own purposes and not for family purposes for which the father is responsible: *The B. & R. Co.* v. *McLeod* (1912), 5 A. L. R. 176. To the same effect is *Arkin* v. *Page,* 287 Ill. 20.

In *Lane* v. *Crandall* (1913), 10 D. L. R. 763, the Supreme Court of Alberta held that the owner of an automobile was not liable for the negligence of his brother to whom the car was loaned for the latter's own purposes, although at the time of the accident the brother was engaged in driving home the owner's wife at the request of the owner's daughter, it not appearing that the owner was aware that the car was being used for that purpose, nor that the daughter had any authority from the owner to request or direct his brother to use the car for that purpose. The decision seems to rest on the common law rule as respects master and servant. To the same effect is *Robillard* v. *Belanger,* 50 Que. S. C. 260.

In *Walker* v. *Martin* (1919), 45 O. L. R. 504, the action was brought against the owner and his daughter, the injury having happened while the daughter was driving the car. Negligence was found against the daughter. Masten, J., said: "I have felt considerable difficulty as to whether or not she was a person 'in the employ of the owner.' She was at the time of the accident, 20 years old—an infant living with her father. There can be no doubt that a father is entitled to the services of his infant daughter at home; she is under his control and he is entitled to her services.

"It may well be urged that where the service is owed by the child to the parent, and the parent is entitled to service

from the child, that the act of the child while performing such service is something done in the employment of the parent; but, after giving the matter the best consideration in my power, I am unable to accede to that view. She was not engaged in the performance of any service for her father, but was acting on her own behalf, nor was she entitled to take out the motor contrary to his express directions for the purpose of doing what she was doing.

"I think that on a fair interpretation of the words 'in the employ of the owner,' they mean something more than merely a right of service, and mean something different from the relationship of a child to its parent. They carry with them an implication of a contractual relationship."

On appeal, 46 O. L. R. 144, Meredith, C.J.O., delivering the judgment of the Court, said: "I agree with the trial Judge, that the daughter, 20 years of age, though living in her father's house, was not a 'person in the employ' of her father. The enactment must be given the meaning which its words ordinarily convey; and I am sure it would be a surprise to those who passed the Act, as well as to nearly all who are bound by it, to learn that every child is a person in the employment of his or her father, or in his service: The Act means some one really employed."

It may well be that where a minor child of the owner, living at home, performs the duties of a chauffeur, he may be said to be in the employ of the owner. That is the effect of the decisions of the American Courts. "The boy was not running it for any purpose of his own, but for the convenience of his mother and by her express direction, for whose use in common with the rest of the family it had been purchased by the father. If the father had employed a chauffeur outside the family at a stated compensation, it could not be contended seriously that taking the wife out for an afternoon call was not the business for which he had been employed. If, instead of hiring a stranger, the father chose to have the same work performed by his minor son to whose time and services he was entitled as a matter of law, it could not be ruled as a matter of law that the jury might not find the business to be that of the father. This is not the case of a mere permissive use of the father's vehicle by the son for his own pleasure. Although the father had no knowledge of the particular journey which was taken on the occasion of the accident, his knowledge that on previous occasions the

wife had used the car, and his testimony of the purpose for which it was bought, and that it was not customary when the wife was going on errands with the automobile to ask his permission, were enough to support a finding that the trip was authorized by him. The fact that the son was the only person in the family who could legally operate the car, had some tendency in that direction. The relation of husband and wife is such that, when the former has purchased an automobile for family use, a ride by the wife in it with his general permission is not as a matter of law the business of the wife, but may be found to be that of the husband": *Smith* v. *Jordan,* 211 Mass. 269; *Hutchins* v. *Haffner,* 167 Pac. 966.

Where the owner allows an incompetent servant, or a minor child without discretion, to drive his car, although the negligence of the driver may not be imputed to the owner on the theory of the existence of the relationship of master and servant, the owner may be liable on the ground that he has been negligent in knowingly permitting an incompetent person to operate his car: *Schultz* v. *Morrison,* 91 Misc. (N.Y.) 248; Huddy, 863. The owner of a car must exercise reasonable care in the selection of a chauffeur, and failing in this, will be held liable for the consequences of his own negligence in sending out his car in charge of an incompetent operator: *Daily* v. *Maxwell,* 152 Mo. App. 415.

The last word on the subject is a judgment of Orde, J., in *Gray* v. *Peterborough Ry. Co. and Bonner-Worth Co.* (1920), 18 O. W. N. 260. The Bonner-Worth Co. were in the habit of selling waste wood to their employees, and they allowed Murray, the driver of the motor truck, and a duly licensed chauffeur, to use the truck after business hours for the purpose of carrying wood to the houses of other employees. When the accident occurred Murray was operating the truck for this purpose—he was then in the company's service, but was not using the truck upon the company's business. Gray, the injured boy, was upon the running board of the truck, with the permission of Murray, when the truck was struck by a street car, and the boy was seriously injured. The jury found both drivers guilty of negligence, and the trial Judge found there was ample evidence to support this finding. The Bonner-Worth Co. contended they were not liable on the ground that at the time of the accident the driver of the motor truck was not engaged upon his employer's business.

Orde, J., held that no liability could at common law attach for an act of negligence in no way connected with his employer's interest, but arising solely from the private business in which he was engaged, distinguishing *Duffield* v. *Peers,* 37 O. L. R. 652. "The Bonner-Worth Company, however, were liable under the provisions of section 19 of the Motor Vehicles Act. The learned Judge could see no reason for holding that the Act was not intended to apply to persons in the position which the plaintiff Gray occupied—a voluntary passenger in the guilty vehicle—as fully as to others using the highway. The provisions of section 19, in view of the wide judicial interpretation already given to them by a series of decisions, including *Mattei* v. *Gillies* (1908), 16 O. L. R. 558, are not to be limited to cases of injuries to persons using the highway other than occupants of the motor vehicle itself, but extend to cases like the present, where the occupant of the car is in no sense a party to the use of the vehicle upon business which is not that of the owner and is not aware that the car is being so used."

MUNICIPAL BY-LAWS.

20. No provision of any by-law heretofore or hereafter passed under paragraph 1 of section 406 of *The Municipal Act,* which is inconsistent with the provisions of this Act, shall affect or apply to motor vehicles. 2 Geo. V. c. 48, s. 20; 3-4 Geo. V., c. 52, s. 6.

Paragraph 1 of section 406 of the Municipal Act gave to councils of cities and towns power to pass by-laws: "For regulating the use on the highways of bicycles and other vehicles not drawn by horses, but not including motor vehicles."

By 7 Geo. V. c. 48, s. 5 (1917), "Paragraph 1 of section 406 of the Municipal Act is repealed," and nothing substituted in its place. By section 3 of the same Act the Highway Travel Act is amended by adding the following as section 10*a*:—

"Any by-laws passed by any municipal corporation or board of police commissioners or police trustees for regulating traffic on the highways which are inconsistent with the provisions of this Act, shall be deemed to be repealed."

Under the circumstances it is difficult to understand why section 20 has been retained in the Motor Vehicles Act. There are, however, other provisions in the Municipal Act

giving municipal bodies power to regulate the user of the public highways.

Any municipality may pass by-laws for prohibiting racing, immoderate or dangerous driving or riding on highways or bridges: Municipal Act, section 398 (9).

Urban municipalities may pass by-laws: "For regulating traffic in the highways and the width of tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares or merchandise; and for prohibiting heavy traffic and the use of traction engines and the driving of cattle, sheep, pigs and other animals during the whole or any part of the day or night in certain highways and public places named in the by-law and for prohibiting traffic in any but one direction in the highways which in the opinion of the council are too narrow for the passing of one vehicle by another, or in which, in the opinion of the council, it is desirable that traffic should be limited in one direction": section 400 (49) as amended by 8 Geo. V. c. 32, s. 7 and 10-11 Geo. V. c. 58, s. 12.

"For setting aside and designating in a suitable visible manner, on any highway upon which street cars are operated, any part or parts as a 'safety zone' and for prohibiting motor or other vehicles from driving over or upon any such safety zone while any pedestrian is thereon or about to enter thereon." 10-11 Geo. V. c. 58, s. 13.

County councils have power to pass by-laws for regulating traffic on county gravel or macadamized roads on which no toll is collected: section 408 (6).

The Boards of Commissioners of Police of cities have power to pass by-laws: "For licensing and regulating the owners of livery stables and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses and other vehicles regularly used for hire within the city, whether such owners reside within or without the city," section 422 (5). And by sub-section (6) for regulating parades "and for giving directions to the police constables for keeping order, and preventing any collision or obstruction of traffic at the intersections or other frequented portions of the highways on all occasions when the highways are thronged or liable to obstruction."

A power to "regulate traffic" on a highway does not, in the absence of express power of prohibition, authorize prohibition: *Toronto* v. *Virgo* (1896), A. C. 88.

Municipal by-laws, to be effective, must be reasonable: *City of Windsor* v. *Bast,* (Mo. App.) 199 S. W. 722.

The Courts do not take judicial notice of municipal by-laws, and the prosecution must prove the same: *People* v. *Trainee*, 92 Misc. 82.

By-laws must not discriminate against residents of the municipality in favour of others: *R.* v. *Pipe* (1882), 1 Ont. R. 43. And they must be passed in good faith in the interests of the public and the municipality, and not for ulterior purposes: *Bell Telephone Co.* v. *Owen Sound* (1904), 8 O. L. R. 74.

Where a municipal council has statutory authority to pass by-laws for regulating or prohibiting the passage of certain classes of vehicles over highways and bridges, it has no power to provide that they shall not pass over them except at the sole risk of the owners. Such a by-law is not a *bona fide* exercise of the power conferred by the statute, as it neither regulates nor prohibits the passage of such vehicles, and it is *ultra vires*: *McMillan* v. *Portage la Prairie* (1896), 11 Man. R. 216.

A company was incorporated by Dominion Letters Patent to carry on business in Canada of letters to hire of motor and other vehicles, and was carrying on such business in Ottawa. The Board of Commissioners of Ottawa, pursuant to section 422 (5) of the Municipal Act, passed a by-law requiring persons carrying on business of this character to take out a license, and imposing a fee for such license. Lennox, J., held the by-law was valid: *Re Major Hill Taxicab Co. and Ottawa* (1915), 33 O. L. R. 243.

A by-law of city police commissioners placing further restrictions on the operators of automobiles for hire within the city will not be effective to control an unqualified license already held by the accused: *Rex* v. *Atcheson* (1915), 25 Can. C. C. 36.

In *Drapeau* v. *Recorder's Court*, 30 Can. C. C. 251, Cross, J., said: "I take it to be well established that, when once the Parliament of Canada, in exercise of its power to legislate upon the subject of criminal law, has declared an act to be a criminal offence, there is no longer any power—whether any had previously existed or not—in a provincial legislature or municipal council to make enactments of prohibitory and penal nature in respect of that Act." The same Judge also took the view that an Act may not be treated and legislated upon at one and the same time by Parliament, as a criminal offence, and by the municipal council as a matter of police

regulation or local well-being. See also *Paulin* v. *Quebec,* 9 Can. S. C. R. 185.

The Nova Scotia Motor Vehicles Act gives municipalities power to make by-laws for the regulation of motor vehicles and for their user of the highways. It was held this did not supersede a municipal ordinance imposing penalties for driving a motor car along a sidewalk: *R.* v. *Archibald,* 29 Can. C. C. 146.

Allowing a boy under the age of 16 to be in charge of a vehicle driven upon the streets, in contravention of a by-law passed under the authority of section 400 (49) of the Municipal Act, does not render the employer of the boy liable for an injury caused by the horse running away, the object of the legislation being, not the protection of the driver, but of the public: *Milligan* v. *Thorne* (1914), 32 O. L. R. 195.

A municipality has the power to make reasonable regulations so as to avoid obstructions in the streets. For example, taxicabs and vehicles used for hire may be refused the privilege of leaving their machines at certain places in the streets where their presence would constitute more or less an obstruction of the free use of the streets by other travellers. Also a municipality may properly pass a regulation forbidding the leaving of a vehicle standing in the street elsewhere than on the right-hand side thereof with reference to the direction in which it fronts: *Beck* v. *Cox,* 77 W. Va. 442. And a "parking" of cars on certain streets may be prohibited: *Sanderson* v. *Atlanta,* 95 S. E. 695. Even the right of the owner to keep his machine in front of his own place of business may be limited by municipal regulations. Thus, in a case involving the prosecution of an owner for obstructing a street in front of his place of business with an automobile, it was said: "No hard and fast rule can be laid down as to what in every case will constitute an obstructing or incumbering of a street by an automobile or other vehicle, within the purview of the ordinance here in question. The time and place of an alleged obstruction and the kind of vehicle must be taken into consideration in each particular case. The stopping temporarily and for a reasonable time of an automobile in a public street for the convenience of the owner is not a violation of the ordinance; but he cannot lawfully use the street as a garage or for a taxicab stand contrary to reasonable police regulations": *City of Duluth* v. *Easterly,* 115 Minn. 64.

A by-law imposing a license fee on persons operating vehicles for hire within the municipal limits does not include

traffic between a point within the municipality and a point outside its boundary: *McDonald* v. *City of Paragould,* 120 Ark. 226. Nor can it apply to one who carries passengers between two points outside the municipality, though in doing so he passes through the municipality: *Ex p. Smith,* 33 Cal. App. 161.

The recent by-law of the City of Toronto to Regulate Traffic on the Public Streets, will be found in the Appendix.

SUSPENDING OR REVOKING LICENSE.

21. The Minister of Public Works and Highways may at any time for misconduct or infraction of the provisions of this Act or of any regulation thereunder by an owner or driver of a motor vehicle suspend or revoke any permit or license, and during such suspension and until any such revocation shall be cancelled by the Minister of Public Works and Highways no further or other license shall be issued to such owner or driver, and the Minister may also for such misconduct or infraction prohibit any person from driving a motor vehicle for a period not exceeding two years, and any such person who drives a motor vehicle during the prohibited period shall incur a penalty not exceeeding $500. 2 Geo. V., c. 48, s. 21; 6 Geo. V., c. 47, s. 3; 7 Geo. V., c. 49, s. 15; 8 Geo. V., c. 37, s. 9.

The period of suspension of a license for a violation of the Act dates from the time of conviction, and the giving of a notice of appeal does not have the effect of deferring the operation of the order of suspension: *Kidner* v. *Daniels,* 102 L. T. 132.

DISTRIBUTING COPIES OF ACT.

22. The Minister of Public Works and Highways shall furnish all Clerks of the Peace with copies of this Act and of the regulations thereunder for distribution to the constables of all counties, districts and local municipalities, and he shall also furnish copies of this Act to the clerks of all local municipalities, to be posted up in conspicuous

places. 2 Geo. V., c. 48, s. 22; 6 Geo. V., c. 47, s. 3; 7 Geo. V., c. 49, s. 16.

ONUS OF PROOF OF NEGLIGENCE.

23.—(1) When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that such loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver. 2 Geo. V., c. 48, s. 23.

(2) This section shall not apply in case of a collision between motor vehicles on the highway. 9 Geo. V., c. 57, s. 5.

"This shifting of the onus or burden of proof, although not unknown in criminal and quasi-criminal matters, is, I think, unique in strictly civil procedure. The effect seems to go far towards withdrawing such cases from the control of the Court as in ordinary jury cases, so far at least as seeing, before the defendant is called on for his defence, that the plaintiff has made out a case. There is left, of course, the preliminary question, whether the accident, upon the evidence, was really caused by the presence on the highway of the motor—a very serious question in this case. Of this there must, of course, be reasonable evidence, or the case must not be allowed to proceed": Per Garrow, J.A., *Marshall* v. *Gowans* (1911), 24 O. L. R. 522.

In the same case Magee, J.A., after quoting section 18 (now section 23), said: "Obviously, before this burden of proving a negative is thrown upon the defendant, the plaintiff must establish that the damage was sustained by reason of the motor, and the plaintiff must bear the onus of establishing it to the satisfaction of the jury. If, for instance, it were a question whether a horse was frightened by a motor or by some startling object or sound nearby, the plaintiff suing the motor owner for injuries sustained, must prove that the fright was caused by the motor, and not by the startling object or sound."

Where a motor vehicle upon the highway causes a person crossing the highway on foot to be frightened and to step back and come in contact with the other vehicle, or the horses

by which it is drawn, a jury may properly find that the loss or damage "was incurred or sustained by reason of a motor vehicle on the highway": *Maitland* v. *McKenzie* (1913), 28 O. L. R. 506.

In the last mentioned case Middleton, J., charged the jury: "If the plaintiff has proven to your satisfaction that the accident happened by reason of a motor vehicle upon a highway, then the owner of a motor vehicle is, by our law, obliged to shew that the accident did not happen by reason of his negligence or improper conduct."

Meredith, C.J.O., delivering the judgment of the Appellate Division, said: "While, under this section, it is undoubted that the question whether the loss or damage was incurred or sustained by reason of a motor vehicle on a highway must be determined in favor of the person claiming damages, before the latter part of the section comes into play, I do not understand that any question as to the person at fault is involved in the determination of it. The fact that the loss or damage was incurred or sustained by reason of a motor vehicle on the highway is all that must be established to cast upon the owner or driver of the motor vehicle the onus of proving that it was not by his fault that the loss or damage happened.

"The next question is as to the effect of the latter part of the section. In my opinion, when it is shewn that the loss or damage was incurred or sustained by reason of a motor vehicle on a highway, a statutory presumption arises that it was caused by the negligence or improper conduct of the owner or driver of the motor vehicle; and, where evidence is adduced to rebut that presumption, the case must go to the jury.

"The statutory presumption, as it appears to me, is at least equal to oral testimony tending to prove negligence on the part of the owner or driver of the motor vehicle; and, when there is evidence both ways, the case must, of course, go to the jury; and there is no power in the Court, in such a case, to dismiss the action, even though the evidence should greatly preponderate in favor of the defendant."

Where a boy, twelve years of age, was struck by an automobile when sitting in a toy-wagon at the side of the street devoted to vehicles, it was held that the case fell within section 23, and the onus of disproving negligence was upon the defendant: *Hook* v. *Wylie* (1916), 10 O. W. N. 15, 237.

The Supreme Court of Alberta held that section 33 of the Alberta Motor Vehicles Act (which is the same as section 23 of our Act), throws upon the driver of the motor vehicle, in all cases of accident, the burden of proof that the injury did not arise through his negligence. Even where the plaintiff admits his own negligence in crossing a highway without looking, the driver of the motor vehicle must prove that he could not by the use of ordinary and reasonable care have avoided the accident which resulted: *White* v. *Hegler* (1916), 29 D. L. R. 480.

Section 23 simply shifts the onus, no more. In the absence of such a provision, when a plaintiff comes into Court alleging damage sustained by reason of a motor vehicle on a highway, he must prove negligence or improper conduct on the part of the owner or driver of the motor vehicle; this provision removes this necessity, and it makes it sufficient for the plaintiff to prove damage sustained by reason of a motor vehicle on a highway. It does not remove any defence; whatever would be a matter of substantive defence before remains to the defendant. Or, stating the same principle from a slightly different standpoint—where a defendant is called upon to prove that the damage was not caused by the negligence or improper conduct of the owner or driver, he may do so by proving that it was caused in whole or in part by the negligence—contributory or otherwise—of the plaintiff: *Bradshaw* v. *Conlin* (1917), 40 O. L. R. 496, per Riddell, J.

"While this section does not relieve the Judge or the jury from the task of carefully weighing the evidence and coming to a conclusion upon it, yet I interpret it as meaning that the burden of disproving his negligence now falls as heavily upon the defendant as that of proving negligence would fall upon the plaintiff, but for the legislation. The object in either case is the same, but the angle of approach is different, and it is conceivable that upon the same facts the result might be different. The section is not to be confined to a mere alteration of the method of procedure at the trial; but, so soon as it is proved that the damage was sustained by reason of the motor vehicle on the highway, it renders the owner liable unless he can prove that he was not negligent. In doing so, every defence which he might otherwise raise is still open to him: *Bradshaw* v. *Coulin*. But he is nevertheless, at that stage, *prima facie* liable": *Whitten* v. *Burtwell* (1920), 47 O. L. R. 210, per Orde, J.

NEGLIGENCE.

Where motor vehicles are using the streets and highways negligence at common law is the basis of all liability for damages arising from such use, except as otherwise provided by statute, or by statutory regulations. And where the violation of any statutory or valid municipal regulation results in injury to another, and the other elements of actionable negligence concur, the basis of the action is also negligence. For these reasons actions involving interpretation of any of the provisions of the Motor Vehicles Act are invariably grounded on negligence, and it will, therefore, be necessary to refer to the decisions in so far as they relate to negligence growing out of the user of the highways by motor vehicles. For convenience the matter will be discussed under the following heads:—

Municipal Negligence.
Collisions with Electric Railways.
Collisions with Pedestrians and Vehicles.
Contributory Negligence of Children.
Miscellaneous Negligence.
Imputed Negligence.

Municipal Negligence:

Within the scope of this volume it is impossible, as it is unnecessary, to encompass the law of municipal negligence as it affects the user of public highways by motor vehicles. The valuable work of His Honour Judge Denton brings the law on the subject down to the year 1906. Since that time the use of motor vehicles has become almost universal, and the liability of municipal corporations has become more definitely fixed. It may, therefore, be useful to note the more recent decisions on the subject.

In *Connor* v. *Township of Brant* (1914), 31 O. L. R. 274, Meredith, C.J.O., said: "That the highway was out of repair, and that the appellant (the municipality) was negligent in not putting it in repair, is beyond question, unless the somewhat startling proposition advanced by the learned counsel for the appellant that the appellant owed no duty to keep the highway in repair so as to be reasonably safe for the use of motor cars, at all events for Ford cars, is maintainable. With great respect for the argument, I am of opinion that it has no foundation either in reason or law, and that the statutory duty to keep in repair the highways is a duty which is

owed to persons using motor cars, as well as to those using vehicles drawn by horses or other animals."

In *Walker* v. *Township of Southwold* (1919), 46 O. L. R. 265, Middleton, J., said: "Although a road is constructed in such a manner as to accommodate the ordinary traffic at the time of its construction, it may well be that the nature of the traffic will so change that 'ordinary traffic' may mean something essentially different from the traffic known or contemplated at the time of construction, and I quite agree that those responsible for the maintenance and up-keep of the public highways must face the changed conditions, and a time may well arise when it is obligatory to alter the highway to meet the changed conditions, but it must be borne in mind that the duty of making the change rests upon the municipality, and the municipal council must be, in the first place, the judge of the necessity of the suggested change, and the municipality cannot be rendered liable unless the Court is able to find that there was negligence on the part of the municipality.

"This depends upon considerations widely different from those proper where the case is one of dilapidation.

"No one can doubt that motor vehicles have a right to use the existing highways, taking them as they find them, and it is equally clear that when motor-traffic becomes part of the ordinary traffic over an existing highway the municipal council must do what is necessary to meet the changed conditions, but the mere fact that a motor occasionally uses a particular highway is not enough to make it at once obligatory on the municipality to reconstruct the road. It is always a question of degree, to be determined upon consideration of many facts—the extent of the change necessary to be made, and its incidental expense; the proximity of other roads already fit for motor-traffic, the general condition of the roads throughout the municipality, the population and its distribution, and the general financial situation, are some of the matters to be considered."

In *Davis* v. *Township of Usborne* (1916), 36 O. L. R. 148, Meredith, C.J.O., said: "I am unable to agree with the view of the learned (trial) Judge that the respondents' duty was fulfilled when they provided a road reasonably safe for the purpose of travel upon it before the advent of motor vehicles. It may be that it would have been unreasonable to require a corporation at once after motor vehicles came into

use to make their roads, otherwise sufficient, safe for travel under the changed conditions; but that is not the case. Motor vehicles have been in use for several years, and are a common means of transportation in general use throughout the province, as well as elsewhere; and, in my opinion, the statutory duty imposed upon the respondents required them to make the road in question reasonably safe for the purpose of travel, and so safe from any additional danger incident to the use of motor vehicles."

In the case just referred to the plaintiff, driving in a buggy on a road, was injured by his horse taking fright at a motor vehicle coming in the opposite direction, shying and overturning the buggy into the ditch. The road was a leading one and much travelled; there were open ditches on each side of it, on one side more than four feet deep. The width of the travelled road was 24 feet, and the ditch into which the plaintiff fell was not guarded by a railing. It was held that the defendants had failed to perform the duty imposed upon them of keeping the road in repair.

The duty of municipal corporations to supply and maintain sufficient guard-rails is further emphasized in *Ackersviller* v. *County of Perth* (1914) 32 O. L. R. 423; 33 O. L. R. 598. Compare *Anderson* v. *Townships of Rochester and Mersea* (1919), 44 O. L. R. 301. There an open ditch or drain had been constructed along the side of a highway, at the instance of the residents of an adjoining township, for the purpose of draining lands in that township. The drain was not a municipal work, but was constructed upon the highway under the authority of the Municipal Drainage Act; it ran along the highway for fifty miles. Middleton, J., held that the defendants were not bound to maintain a guard-rail along the course of the drain—that if a guard was necessary it was a part of the cost of the drain and should be borne by those for whose benefit it was constructed.

"Cities and towns are not required by the law to make special provisions in order to keep all their public ways at all times in condition for the safe passage of automobiles, bicycles and other mechanisms for travel newly devised and unthought of at the time when the statute imposing the general duty as to repairs of ways and liability for defects therein was enacted. But they are obliged to keep their ways reasonably safe and convenient for travel generally,

having regard to all the circumstances. Automobiles are recognized by the law as a legal method of travel. Elaborate statutory provisions are made for their registration, for the licensing of those who operate them, and for their management upon public ways. It is common knowledge that at present in this commonwealth a vastly larger number of people travel upon the highways in automobiles than in horse-drawn vehicles. The care as to the repair of roads cast upon the municipalities by the statutes has reference to all kinds of legitimate travel, including that rightly taken in automobiles. Although special provision for their safety is not demanded, their presence cannot be ignored: *Kelleher* v. *City of Newburyport,* 227 Mass. 462. To the same effect is *Cone* v. *City of Detroit,* 191 Mich. 198.

It is a question for the jury as to what precautions a municipality should take to guard against accidents; and, generally speaking, expert evidence is not admissible on the question whether the highway is reasonably safe for automobiles: *Sweet* v. *Salt Lake City,* 43 Utah, 306.

A highway may be out of repair within the meaning of section 460 of the Municipal Act, although there is no disrepair in the sense of dilapidation; the statute requires that the highway be kept in condition reasonably sufficient for the needs of the traffic on it, where the municipal corporation has a margin of taxation power more than enough for the purpose: *Raymond* v. *Township of Bosanquet* (1918), 43 O. L. R. 434.

Defendants were building a culvert on a leading township road and put up a barricade with a notice that the road was closed to the public. The barricade was down the night of the accident—was flat on the ground, and no lights were up at the place of the barricade or at the culvert. The plaintiff, driving his car about 8.30 on a fairly dark night, passed the barricade, and suddenly seeing the excavation, brought his car to such a sudden stop it was injured. Logie, J., found the road out of repair and defendants liable: *Kankkunen* v. *Township of Korah,* (1919), 46 O. L. R. 412.

Where the driver of a motor car knows the road is dangerous and he takes the risk, he cannot recover: Per Middleton, J., in *Miller* v. *County of Wentworth* (1913) 5 O. W. N. 317, affirmed 5 O. W. N. 891. Neither can a passenger in the car who knows of the danger. "It is sought to distinguish the case of Fred Miller upon the ground that he

was a passenger in the car, and that the negligence of the late Duncan Miller would not interfere with his right to recover if negligence on the part of the municipality could be shewn. Reliance is placed upon the case of *Plant* v. *Township of Normanby,* 10 O. L. R. 16; but I do not think that this can help him. It is true that the driver's negligence is not necessarily to be attributed to the passenger; but here the whole situation was as much known to the one brother as to the other. Each consented, I think improperly, to take the risk of making this descent in the darkness. and this negligence precludes either from recovering." *Ib.*

In *Roe* v. *Township of Wellesley* (1918) 43 O. L. R. 214, an action was brought by husband and wife for injuries caused to the wife by reason of a motor vehicle in which she was being driven, along a township highway, dropping into a hole at the end of a bridge forming part of the highway. The motor vehicle was owned by the husband, and was at the time of the accident, being driven by the plaintiffs' son, a boy under 16 years of age. This son had driven over the bridge a few days before and experienced a bump as he drove off the bridge. It was held that it was his duty, having regard to his knowledge, to drive with more caution, and his carelessness was the cause of the injury. "On another ground also the plaintiffs fail. They are as a matter of law identified with their driver. The car was owned by the plaintiff James Roe, who knew that his son was prohibited by law, owing to his age, from driving a motor vehicle. Yet it was by Roe's authority and with the concurrence and sanction of his co-plaintiff that the boy was driving the car. Even if the prohibition did not exist, the negligence of the driver affects his parents, as he was acting by their authority. His negligence is clearly their negligence."

The rule in regard to negligence where a person is injured by coming in contact with an obstruction on a highway is that two things must concur to support the action: an obstruction on the highway by the fault of the defendant, and no want of ordinary care on the part of the plaintiff: *Freedman* v. *City of Winnipeg* (1918) 43 D. L. R. 126.

In an action for damages for personal injuries sustained by reason of the non-repair of a highway, neither ignorance of the law nor verbal notice to the municipal corporation of the accident is sufficient to excuse the want of the notice of

the accident required by section 460 (4) of the Municipal Act. Even though the corporation is not prejudiced by the failure to give the notice: *Egan* v. *Township of Saltfleet* (1913) 29 O. L. R. 116.

The statute does not require time or place to be given in so many words, and where a notice stated the accident to have occurred on the road between two named villages, and the evidence shewed the township officials knew the locality, the notice was held to be sufficient: *Young* v. *Township of Bruce* (1911) 24 O. L. R. 546. And see *McQuillan* v. *Town of St. Marys,* 31 O. R. 401.

In *McInnis* v. *Township of Egremont* (1903) 5 O. L. R. 713, Street, J., said the notice "should state the time and place of the accident with reasonable particularity"; and held that a notice stating the cause of the accident on May 7th, instead of May 6th, was sufficient.

As to what is a "reasonable excuse" for want of, or insufficiency of the notice, see Words and Terms Judicially Defined, 333, 334, and *Wallace* v. *Windsor,* 31 O. L. R. 62.

Collisions with Electric Railways.

Anyone who attempts to drive across the track of an electric street railway, where he knows that cars are constantly passing, without looking to see whether a car is approaching, is guilty of contributory negligence barring recovery for damages caused by a car colliding with a vehicle in which he is driving: *Carleton* v. *City of Regina,* (1912) 1 D. L. R. 778.

In that case Lamont, J., said: "It was argued that even if the plaintiff was negligent in not looking to see where the street car was before attempting to cross, yet the motorman could by the exercise of reasonable care after he saw the plaintiff was going to cross, have stopped the car and avoided the accident. It is the duty of a motorman in taking his car over a crossing to keep a reasonable lookout for pedestrians and vehicles using the same crossing. A street car and other vehicles have equal right to use the crossing, but in using it both must use reasonable care to avoid collision. . . . It is a matter of common daily occurrence for a motorman to see both pedestrians and vehicles approach a track on which a car is moving and stop when they come within a few feet of it to allow the car to pass. A prudent and cautious man would not attempt to cross in front of a moving car unless there was clearly time to cross safely. If there is nothing to

indicate to the contrary a motorman is justified in assuming that the person approaching his car-line will use ordinary prudence in so doing; but the moment the motorman perceives there is danger it is his duty to act as promptly as he can to avert danger: see *Fewings* v. *G. T. R.*, 14 O. W. R. 586, and *Jones* v. *Toronto & York Radial Co.*, 25 O. L. R. 158."

Ramsay v. *Toronto R. Co.*, (1913) 30 O. L. R. 127, was a case of a pedestrian injured by a street car. The substance of the jury's findings was that her death was caused by the negligence of the defendants in operating their car at an excessive rate of speed and failing to warn her of the approach of the car, and that the deceased, having looked up and down the street and seen the car, had exercised reasonable care. Lennox, J., nonsuited the plaintiff. Mulock, C.J.Exch., delivering the judgment of the Appellate Division, said there was evidence to support the jury's findings of negligence on the part of the defendants and the issue could not properly have been withdrawn from the jury—that persons crossing railway tracks are entitled to assume that the cars will be driven moderately and prudently. If a person crosses in front of an approaching car, which is so far off that, if driven moderately, it cannot overtake such person, even though he do not look again and is injured, he is not guilty of contributory negligence: *Toronto R. Co.* v. *Gosnell*, 24 S. C. R. 552.

"In the present case the deceased did look once, and, according to the jury's finding, circumstances excused her from looking again before actually stepping upon the track. Consideration of these circumstances was necessary before the jury were in a position to decide whether she had acted reasonably. Some of these circumstances were: that the sister looked for a car; that nothing obstructed their view; that it is reasonable to suppose they were able to see a considerable distance up the track; and that neither of them was able to see a car; that, in consequence, they each assumed that no car could overtake them in their comparatively short trip across the street; and that they both acted on this belief in crossing the track.

"The jury were entitled to take into consideration these excusatory circumstances in order to determine whether the deceased had been negligent: *Wright* v. *G. T. R. Co.*, 12 O. L. R. 114. This was not a case where the accident was caused by

the pure folly and recklessness of the deceased, which was the species of negligence commented upon by Lord Cairns in *Dublin, Wicklow & Wexford R. W. Co.* v. *Slattery,* 3 A. C. at p. 1166.

"From the facts proved it cannot be said that two reasonable views cannot be taken of the conduct of the deceased. As said by Bowen, L.J., in *Davey* v. *London & S. W. R. W. Co.,* 12 Q. B. D. 70, at p. 76: 'If the facts which are admitted are capable of two equally possible views, which reasonable people may take, and one of them is more consistent with the case for one party than for the other, it is the duty of the Judge to let the jury decide between such conflicting views.'

"It was contended before us on behalf of the defendant company that as a matter of law a person was bound to look before crossing a railway track, and that failure to do so was *per se* negligence; and *Grand Trunk Ry. Co.* v. *McAlpine,* 1913, A. C. 638, was cited in support of that proposition. That case lays down no such doctrine. In his charge to the jury in that case the learned trial Judge had told them that 'a party who crosses a railway is obliged to look, there is no doubt about that, but to what extent he is obliged to look is a question which is disputed. It seems to be considered now that it is sufficient if a party . . . looks both ways on approaching a track. He need not necessarily look again just before crossing. That is the English view.' And in dealing with this passage, Lord Atkinson said: 'That was an entirely erroneous view of the English law. Whether in a case of this character the plaintiff's negligence was the sole cause of his misfortune, or whether he was guilty of contributory negligence, were questions of fact to be decided in each case on the facts proved. There was no such rule of law in England as that if a person about to cross a line of railway looked both ways on approaching the track he need not necessarily look again just before crossing it."

"These observations do not affirm the proposition that a person about to cross a railway track is bound to look, and that failure to look is negligence. They were made merely in repudiation of the erroneous doctrine contained in the above quoted extract from the charge of the learned trial Judge.

"The duty of a person about to cross a railway track is not to be guilty of negligence, which is another way of saying that he must exercise reasonable care. In each case what

is reasonable care is a question of fact to be decided by the jury, according to the facts of the case and that is the only interpretation of which the above quoted observations of Lord Atkinson admit."

In an action for damages to a motor-car owing to a collision with a railway train, the jury found the defendant negligent owing to delay in applying the brakes, and that the driver of the motor-car was negligent in not keeping a proper look-out. They also found that after the defendant's employees became aware that the motor-car was in danger they could have avoided the accident by the exercise of reasonable care, and awarded the plaintiff damages. The driver of the motor-car admitted that she saw the train when from 30 to 35 yards from the track and that she could have stopped the motor in from 20 to 25 yards. The Court of Appeal held that the jury should have been asked whether the driver of the motor-car, after she saw the train coming, could by the exercise of reasonable care and skill have avoided the accident, and that such question not having been submitted there should be a new trial: *Gavin* v. *Kettle Valley Ry. Co.* (1918) 26 B. C. R. 30.

It is well settled that a person who goes directly in front of a street car where there is evidence that he did not look, or that there was an unobstructed view so that he might have looked, is not in the exercise of due care: Clark's St. Ry. Accident Law, 2nd ed., par. 88.

The plaintiff driving a motor-car on a dark night, came into collision with a car of defendant's railway. The jury found negligence on defendant's part in that there was no light on the front of the car, and that the plaintiff did not use enough care, and should have stopped dead at a dangerous crossing. It was held that the extent of care required from a person about to cross in front of an engine or car running on rails, depends entirely on the particular conditions in each case: in each case what is reasonable care is a question to be decided by the jury according to the facts of the case. Hodgins, J.A., delivering the judgment of the Appellate Division, said: "While the courts have consistently refrained from tying themselves down to the formula of 'stop, look and listen,' as expressing the whole duty of reasonable care, it is only because the extent of the care required depends entirely on the particular conditions of each case. . . . Under these circumstances the jury may well

have thought that looking was not enough, and that, on a dark night, at a dangerous crossing, necessitating a wide curve to negotiate it, reasonable care demanded a stop, as listening might be useless if the motor was in motion": *Orth* v. *H. G. & B. Ry. Co.*, (1918) 43 O. L. R. 137.

Grand Trunk Ry. v. *McAlpine*, 1913, A. C. 845, has already been referred to in *Ramsay* v. *Toronto Ry. Co.* It was further discussed in *McKenzie* v. *B. C. El. Ry.* (1914) 19 B. C. R. 1, where it was said: "It is obvious that a man might not discharge his duty to look before crossing a track in the case of a near-by car going at a proper rate of speed in one set of circumstances, but might do so in another in the case of a car which was a long way off and yet, unknown to him, was really approaching at a very high rate of speed, thereby causing him to miscalculate his real position in regard to it, and put himself in jeopardy. As I understand the judgment in the McAlpine case, there is no rule of law that governs the matter of how often one should look before crossing, but it is a question of fact to be passed upon by the jury in the particular circumstances of each case."

The driver of a motor vehicle attempted to cross in front of a street car. He said the street car was coming at a "tremendous speed," and was 75 feet away when he first saw it. The jury acquitted him of negligence, but the Appellate Division said this finding could not be supported. "The chauffeur was, on his own shewing, perfectly safe, and he chose to take a step either utterly foolish or quite unwise and unjustifiable, having regard to the approaching car, whether going at a high speed or not": *Ontario Hughes-Owen* v. *Ottawa Electric Ry.* (1917) 40 O. L. R. 614.

The driver of a covered wagon who could not look to the right or left without leaving his seat, was held guilty of contributory negligence in driving upon a street car track without exercising reasonable care to ascertain if there was danger from an approaching car: *Solatinow* v. *Jersey City R. Co.*, 70 N. J. L. 154.

It is quite true that under the law, and if we are to have fast travel from the necessity of the case the company must have a right of way on that portion of the street on which it alone can travel paramount to that of ordinary vehicles—but it is not an exclusive right. The owners or drivers of other vehicles must give way, and are not justified in impeding the cars of the company, and are liable to penalties when wilfully

doing so; but the public still has a right to the ordinary use of the streets, and the company under its charter, whilst entitled to the priority of the right of way, cannot unnecessarily impair or lessen the right of the public who still have the right to drive along or across the tracks if they use due diligence not to interfere with the passage of the cars. Notwithstanding the very broad and general language of the company's charter, they are bound to recognize the rights and necessities of public travel, and to notice the presence of other vehicles and pedestrians, and so to regulate the speed of the car that it may be quickly stopped should occasion require it. On the other hand the driver of a carriage or other vehicle is bound to use ordinary diligence when crossing or driving upon the tracks of the railway, and to look up and down the track before entering upon it, and to turn off and allow the cars to pass without hindrance or slackening of the ordinary speed: Per Burton, J.A., *Gosnell* v. *Toronto Ry. Co.,* (1888) 21 A. R. 553.

The judgment in the Gosnell case was affirmed, 24 S. C. R., where it was held that persons crossing street railway tracks are entitled to assume that the cars will be driven moderately and prudently, and if an accident happens through a car going at an excessive speed the street railway company is responsible. The driver of a cart crossing a railway track is not guilty of contributory negligence because he does not look to see if a car is approaching if, in fact, it is far enough away to enable him to cross if it is proceeding moderately and prudently. He can be in no worse position than if he had looked and seen there was time to cross.

In *Danger* v. *London Street Ry.,* 30 Ont. R. 493, the plaintiff, who was driving a horse along the same street and in the same direction in which a car was going, turned in front of a street car to cross the rails, without looking or listening to ascertain the position of the car. A wheel of his vehicle was struck by the car and injured. It was held he was not entitled to recover damages, as the accident was caused by his own negligence in not looking to see how close the car was before attempting to cross. Boyd, C., in delivering the judgment referred to *Stubley* v. *London & Northwestern Ry.,* L. R. 10 Exch. 13: "That persons crossing the rails are to exercise ordinary and reasonable care for their own safety and look this way and that to see if danger is to be apprehended."

The Danger case was followed in *O'Hearn* v. *Port Arthur*, 4 O. L. R. 209, where the facts were very similar. Meredith, J., said: "I understand the Danger case to decide this, that under ordinary circumstances anyone attempting to cross an electric street railway, with the knowledge of the constant running of cars upon it such as is usual in cities and towns, without looking, is negligent. I entirely concur in that view of everyone's duty to himself and to all else whom he may endanger by want of that ordinary care. No reasonable man could, in my judgment, say that on the facts of this case there was not great negligence in attempting to cross without looking." And Boyd, C., said: "When vehicles are moving ahead of the cars and in the same direction, it is reasonable to hold that the drivers of the vehicles who know when and where they are going to turn and cross the track, should be vigilant to see that no car is coming behind them. A greater burden in this regard should rest upon the drivers than on the motorman, who is not to be kept in a state of nervousness and apprehension that some one or everyone ahead may cross in front of the running car at any moment. The driver can move in any direction—not so the motorman. The right of way being with the car the driver should keep out of its tracks, unless upon observation he is satisfied the passage is clear."

The driver of a vehicle approaching a railway crossing with which he is familiar is bound to avail himself of his knowledge of the place and act accordingly. If, as he approaches the crossing, his vision is unobstructed, he is bound to look for approaching cars, and if his vision is obstructed he must exercise extreme care and caution: *Dungan* v. *Wilmington City R. Co.*, 4 Penn (Del.), 458.

The plaintiff was driving a four-horse vehicle filled with furniture, so constructed that he could not look behind to see if a car was coming, without getting down from his seat. While driving in the same direction as the street car was moving he attempted to cross the tracks, and had almost made the crossing when the car collided with him. The Court said: "It was the duty of the motorman to notice the apparent movement and consider the probable movement of teams travelling before him in the same direction, especially if the driver was so seated that he could not see the car approaching behind him. The driver of such a team as this has a right to suppose that a motorman coming

from behind will give time to cross the tracks after he has started to do so, and not run against him while he is crossing. While it is his duty to use reasonable care for his own safety, he must trust something to the expectation that others will do their duty": *Williamson* v. *Old Colony Street R. Co.*, 191 Mass. 144.

A motorman seeing a team driving ahead of his car in the same direction that he was going and parallel to his track, might be justified in assuming that he would not attempt to cross the track at other points than at the street crossings, but he would not be justified in assuming that the driver would not cross when he reached the intersection of another street, where it might become necessary for the man to change his course of travel: *Techlenburg* v. *Everett R. L. & W. Co.*, 59 Wash. 384.

The plaintiff's automobile was going in the same direction as the street car, and his story was that the motorman negligently and recklessly ran into the automobile when following it; the motorman's story was that the automobile stopped suddenly and without warning to the motorman—thus causing the injury. The jury found the automobile was injured by the defendant's negligence consisting of "excessive rate of speed." It was held that although this finding did not directly indicate the connection between the negligence and the accident, it was clear the jury accepted the plaintiff's story and not the defendant's, and there was evidence on which they might so find. Riddell and Rose, JJ., dissented on the ground that without something from which the jury might infer that the speed was excessive, in the sense that it was so great that the motorman could not make a sudden stop to avoid the injury, it was not open to the jury to say that the speed was negligently excessive: *Gallagher* v. *Toronto Ry. Co.*, (1917) 41 O. L. R. 143.

The plaintiff was a passenger on one of the defendant company's cars. The car, having passed the intersection where the plaintiff intended getting off, she asked the motorman to let her off, and he at once stopped the car without waiting until the next intersection was reached. The plaintiff alighted and proceeded to the north side of the street, when she was struck by a motor car of the defendant Stiles, which was moving in the same direction as the street car. The jury found the plaintiff's injuries were due to the negligence of the defendant company, in that the "motorman

should not have stopped between regular stops to discharge passengers," and they acquitted Stiles of negligence.

A city by-law provided that street cars should stop before reaching intersections instead of stopping after passing the intersections. Kelly, J., directing judgment for the plaintiff, said that this by-law, taken with section 15 of the Motor Vehicles Act, prohibiting motor-vehicles from passing street cars which are stationary for the purpose of taking on or discharging passengers, affords some ground for assuming that there is, to persons in the street, a greater danger from street cars stopping elsewhere than at the usual stopping places than from their stopping where persons who may be relying on the above provisions may reasonably expect them to stop. Correspondingly, persons operating street cars should realize there is such greater danger and take reasonable precautions against possible consequences. The stopping of a street car between the usual stopping places may not be in itself an act of negligence; but there is a duty on those operating a street car to take reasonable means to safeguard one who, by their act, may be exposed to such danger. It is likewise incumbent on persons in the position in which the plaintiff placed herself to take reasonable means to avoid such danger. But the jury had exonerated this plaintiff from negligence in that respect: *Ellis* v. *Hamilton Street Ry.*, (1920) 18 O. W. N. 226.

An action for injury to an automobile by a collision with a street car in turning a corner cannot be maintained against an electric railway if there is no evidence to warrant the jury in finding that the motorman, by exercising reasonable care, could have stopped his car and have avoided the collision after he had become aware that danger was imminent: *Gooderham* v. *Toronto R. Co.*, 8 O. W. N. 3; 22 D. L. R. 898.

Where a man approaches a railway crossing, the track being in full view, knowing that the crossing is there, and that an approaching train can be seen for a long distance, and fails to look and gets upon the crossing and is injured, he is guilty of such contributory negligence as will exonerate the railway company even if there was failure to blow the whistle and ring the bell: *Smith* v. *Canadian Pacific Ry. Co.* (1920), 53 D. L. R. 411. And see *Walker* v. *Grand Trunk Ry.* (1920), 47 O. L. R. 439.

Where in the agony of imminent collision caused by a jitney driver's recklessness, a motorman increases speed in

the hope of avoiding an accident, the railway company is not liable for injuries occasioned thereby to a passenger of the jitney: *Moore* v. *B. C. El. Ry. Co.*, (1917) 35 D. L. R. 771.

Collisions with Pedestrians and Vehicles.

The fundamental law is that every person using a public highway is required to exercise reasonable or ordinary care to avoid injury to other persons lawfully using the highway. The criterion of "reasonable" or "ordinary" care varies according to the circumstances. What would constitute reasonable care in one case might be considered recklessness under other circumstances. In other words, the care to be exercised under given circumstances is commensurate to the dangers involved. This principle is applicable to the operation of motor vehicles in two ways. In the first place, the operation of automobiles, on account of their speed, size and other characteristics, is attendant with greater danger to pedestrians and other travellers than is the movement of a horse-drawn carriage. Thus, it may be said that the care required of the driver of a motor vehicle is "commensurate" with the danger of such a machine. This may require that the driver shall at all times use greater diligence than would be imposed on the driver of a horse and wagon or on other travellers. Secondly, the danger from the operation of a motor vehicle may be greater at some places than at others. The precautions which are sufficient when running along a rural highway with few travellers are entirely insufficient when driving along a crowded city street. In this way, the care of the driver must be commensurate with the dangers arising from the surrounding circumstances. Thus, it is sometimes said that higher care is required of an automobile traveller when he is approaching a street intersection. So, too, it has been held proper for the presiding Judge to charge the jury that in busy streets "exceeding carefulness" is required on the part of the driver of an automobile. And greater care may be required where there are children playing in the streets: Huddy, 337, 340.

In a Manitoba case, Robson, J., said: "The defendant's counsel relied upon a number of authorities such as *Cotton* v. *Wood*, 8 C. B. N. S. 568, in which case the Court of Common Pleas held that it is equally the duty of foot passengers when crossing a street to look out for vehicles as it is the duty of the driver of vehicles to look out for foot passengers. But the introduction into street traffic of the automobile,

combining speed with great weight and size, has brought about new considerations. The Legislature has deemed it necessary to interfere for the protection of pedestrians and vehicular traffic of other kinds. Hence the Motor Vehicle Act already referred to.

"Without implying that a pedestrian crossing a highway is bound to beware of danger as he would were he crossing a railway, the principle that persons lawfully using a highway are entitled to rely on warnings required by statute, as for instance from railway engines, may well be applied here. See for this principle *Vallee* v. *G. T. R.,* 1 O. L. R. 224; *Pedlar* v. *Canadian Northern R. W. Co.,* 18 M. R. 525.

"I consider applicable here a rule laid down in a Massachusetts case arising from an automobile accident as follows: 'The usual rule of ordinary care does not impose upon travellers the burden of being constantly on the lookout to see if their path is free from dangerous defects or in a state of apprehension of personal injury from other travellers. The traveller not only has a right to presume that the way is reasonably fitted for his use, but also that those who may be lawfully using it with himself will exercise a proper degree of care? *Hennessey* v. *Taylor,* 76 N. E. 224. See also the notes to *House* v. *Cramer* (134 Iowa 374), 13 Am. & Eng. Ann. Cases, 461": *Toronto General Trusts Corporation* v. *Dunn,* (1911) 20 Man. L. R. 412.

A pedestrian who chooses to exercise his undoubted right to cross a highway not at a regular crossing for passengers, and does not look for vehicles, cannot with impunity be knocked down by automobile drivers. There are cases in which a pedestrian even so acting negligently can recover damages from the driver of a vehicle who injures him. "A foot passenger cannot injure anyone or anything, unless it be a mere child, by a collision while walking. The driver of an automobile is in charge of a dangerous machine. On a city street there would seem to be no reason why an automobile driver ever run into anyone except in one case, which sometimes occurs, where a pedestrian suddenly steps from the curb or from behind another vehicle and gets in front of the automobile before its driver has any opportunity of seeing what he is about to do. The more crowded the street the more slowly the driver should go with his vehicle, and whenever he runs into a pedestrian, whether that pedestrian is careless or not, whom he could and should have seen in time

to avoid the collision, I think the driver is liable. Of course, each case must depend on its own facts, and what is reasonable to be decided according to the circumstances. But what should be declared, I think, is that the negligence of the pedestrian in not looking and the fact that the driver was not going at an excessive rate of speed do not necessarily decide the case in favor of the driver, as seems to have been the view of the trial Judge in the present instance": Per Stuart, J., delivering the judgment of the Court in *White* v. *Hegler,* (1916) 29 D. L. R. 480.

The non-observance of a duty imposed by statute is in itself evidence of negligence. The precaution which the Legislature has directed to be taken is evidence of the standard of care which should be maintained under the circumstances. The non-observance by a motor driver of that which the Legislature has prescribed as a suitable precaution is failure to observe that care which an ordinary prudent man would observe, and if damage results from such non-observance, he must be held responsible therefor: *Stewart* v. *Steele,* (1912) 5 Sask. L. R. 359, 6 D. L. R. 1. See also *David* v. *Britannic Merthyr Coal Co.,* (1909) 2 K. B. 146.

The plaintiff, when on his way to board a street car which had stopped at a place where it was usual for passengers to get on the cars, was knocked down and injured by a motor while driven by the defendant's chauffeur past the street car. The motor vehicle was being driven at a moderate speed on the proper side of the road, behind a team going in the same direction. The team, when opposite the street car, turned to the right to avoid hitting the plaintiff, and the chauffeur, thinking the road was clear, proceeded when suddenly the plaintiff appeared before him. The chauffeur did all he could to avoid hitting the plaintiff, but the latter appeared confused, took a step backward and was struck. Metcalfe, J., said: "Under these circumstances, finding himself suddenly confronted by a motor, it is well known that the pedestrian is liable either to go forward, jump back, heave to or swerve, and to do any of these things instinctively and without any manner of reason. A sudden panic seems to overcome persons, at all other times of healthy and rational intellects, and I think the driver of a motor car must expect under the circumstances to be at all times confronted by pedestrians who for the moment lose control of their mental faculties": *Rose* v. *Clarke,* (1911) 21 Man.

R. 635. In this case the liability of the defendant seems to have been based on the common law, and apart from any statutory enactment similar to section 15 of the Ontario Act.

It is the duty of persons coming out of a cross-road into a main artery of traffic to wait and give way to that traffic, and not to throw themselves headlong into the advancing traffic along the main travelled road: *Monrufet* v. *B. C. El. Ry.* (1913) 18 B. C. R. p. 92.

The plaintiff was a passenger in a taxicab owned by defendants. The driver was running at a considerable speed and turned into the wrong street. He turned quickly to correct his mistake and ran into an upright post plainly visible, and the plaintiff was injured. It was held that the defendants were liable: *Hughes* v. *Exchange Taxicab,* (1913) 11 D. L. R. (Man.), 314.

Where, because of his own negligence, a driver of an automobile is placed in such a position that it becomes necessary for him to change the course of his automobile to avoid injuring one person, and in so doing injures another person, he is liable to the latter: *Oakshott* v. *Powell,* (1913) 6 Alta. L. R. 178; 12 D. L. R. 148.

A pedestrian crossing a wide street who stops in the roadway at a place beside the street car track for cars to pass and then walks back in the direction from which he came without looking for approaching vehicles, is himself guilty of negligence disentitling him to recover where, in retracing his steps, he walked in front of an automobile proceeding at a moderate speed and was knocked down: *Todesco* v. *Maas* (1915) 8 Alta. L. R. 187; 23 D. L. R. 417.

The defendant drove a motor car into a school yard and around the school building to where the plaintiff was working with a team and scraper, neither party being aware of the presence of the other. The motor car frightened the plaintiff's horses and caused them to run away, one of them being injured. The trial Judge did not find the defendant guilty of negligence. On appeal the Court said: "The plaintiff urges that driving a motor car into the school yard and around to the back of the school was a trespass and that therefore the defendant was liable. I do not think that on the evidence we can find the driver was committing a trespass. But even if we assume he was committing a trespass, the damage which occurred did not naturally flow from the trespass and was not an ordinary consequence of the trespass.

It was too remote": *Collyer* v. *McAuley,* (1918) 46 D. L. R. 140.

For a driver to take his hands off the steering wheel when the automobile was moving at a high rate of speed, was held to be gross negligence: *Borys* v. *Christowski,* (1916) 9 Sask. L. R. 181.

It is a defence to an action for negligence that the defendant did the act complained of in response to his instinct for self-preservation, provided that his action was what a reasonable man might well have done under the circumstances: 21 Halsbury, 479; applied in *Turnbull* v. *Graham,* (1919) 44 D. L. R. 632. But where the driver of the automobile brings the emergency upon himself by his own carelessness or negligence, he cannot set that up as a defence: *Elliott* v. *Fabra,* (1916) 10 O. W. N. 41.

So where a driver applies his brakes suddenly to avoid hitting a pedestrian, and by reason of so doing the car skids and strikes another automobile, the jury may be justified in holding him not guilty of negligence: *Moir* v. *Hart,* 189 Ill. App. 566. But if the driver is running his car at an excessive rate of speed, and in an attempt to avoid a pedestrian in the highway, he comes into collision with another car, he cannot plead an emergency: *Conlon* v. *Trenkharst,* 195 Ill. App. 335.

While a driver is required to keep a lookout to avoid pedestrians who may appear in front of his machine, and while there is a special duty in this respect when children are in the street, he is not generally required to look out for children who may attempt to climb on the side or the rear of his car: *Smith* v. *Schornhofen Brewing Co.,* 201 Ill. App. 552; *Ostrander* v. *Armour Co.,* 176 N. Y. App. Div. 161.

But where the owner of an automobile upon returning to his car finds a child thereon, he is not absolved from further duty towards such child. When the child remains in close proximity to the car he is required to exercise reasonable care to avoid injury: *Ziehm* v. *Vale* (1918), 98 Ohio 306.

When a collision occurs at a place where a motor vehicle has no right to be, *e.g.,* on a sidewalk, there is a presumption that the driver of the motor vehicle was guilty of negligence: *Brown* v. *Des Moines Steam Bottling Works,* 174 Iowa 715.

In an action for negligent driving, the defendant was asked by counsel whether anything more could have been

done to prevent the collision which occurred; held improper as being the point which the jury had to decide, and that the defendant should have stated the facts without giving his opinion, and left it to the jury to determine whether he could have done anything more than he did to avoid the collision: *Courser* v. *Kirkbridge* (1883), 23 N. B. R. 404, followed in *Campbell* v. *Pugsley,* (1912) 7 D. L. R. 177.

The loss or damage was incurred or sustained "by reason of" a motor vehicle on a highway may be found where, in order to avoid an automobile, a pedestrian was compelled to step backward and in doing so came into contact with a horse and was injured: *Maitland* v. *McKenzie,* 28 O. L. R. 506.

A boy sixteen years of age was standing in the street with another boy watching a concrete mixing machine which was being operated. There was a single street railway track in the middle of the street, and the mixing machine stood between one of the rails and the curbstone. The machine had a hopper, which when lowered swung outward about two feet beyond the machine toward the centre of the street. The boy was standing between the rails of the railway track, and, when the hopper was lowered stepped back a single step to avoid being struck by it and was struck and killed by a motor car being driven negligently at about thirty miles an hour and approaching without warning. There was ample space in the highway for the motor car to have passed behind the boy without striking him. It was held that, on these facts, it could not be ruled as a matter of law that the boy was negligent. It was further held that even if the boy did not look behind him before stepping back, his failure to do so would not necessarily be negligence: *Sarmento* v. *Vance,* (1918) 231 Mass. 310.

The plaintiff, on a motor cycle, was travelling on the wrong side of the road, and, when about 150 feet from the defendant's automobile, attempted to escape from his dangerous position, when he lost control of his machine and came into contact with the automobile. The Appellate Division set aside the verdict of a jury in favour of the plaintiff on the ground that there was no reasonable evidence of negligence, either primary or ultimate, on the part of the plaintiff: *Coffey* v. *Dies* (1916), 10 O. W. N. 255. See further sections 3 and 4 of The Highway Travel Act.

Contributory Negligence of Children.

The application of the rules concerning contributory negligence to cases of injuries suffered by small children has been found a matter of considerable difficulty. The obvious hardship of requiring from a little child a degree of care and a soundness of judgment in anticipating and avoiding danger, which are not found in the majority of grown-up persons; and the apparent hardship, on the other hand, of compelling strangers, whose negligence has not contributed any more to the injury of the children than the negligence of their parents or guardians, to compensate for the whole loss, have so embarrassed the courts as to lead to many inconsistent and irreconcilable decisions. Some judges solve the difficulty by holding that even babies are bound in law to use as much care and discretion in avoiding injury, as could be expected from adults. Other judges, shocked at this harsh rule, adopted the equally short method of declaring that the rule of contributory negligence did not appeal at all to small children. Still others adopted a midway course, holding that small children were not bound to use any greater care than was usually possessed by children of the same age, but that the negligence of their parents or guardians, in suffering them to be exposed to injury, was to be imputed to them. Under this conflict of opinions we must state what appears to be the true rule, noting the deflections on the one side or the other from that rule, which are supported by authority in the different States.

Though children are held liable for their unintentional injuries to others without reference to their ability to exercise discretion, such is not the rule in the law of contributory negligence. On the contrary their responsibility or irresponsibility for acts or omissions that would constitute contributory negligence on the part of an adult is to be determined by the very inquiry whether they were of sufficiently mature judgment to be able to distinguish between what was prudent and what was imprudent with respect to the particular act or omission charged. Whatever difference of opinion there may be as to the soundness of the doctrine of the liability of children for primary negligence, the wisdom and justice of the rule forbidding one who has negligently inflicted an injury on one of them from invoking the rule of contributory negligence, to exempt himself from liability, except where the child had the necessary discretion to distin-

guish the quality of the act, is probably of universal assent both by jurists and ethicists. The same rule that applies to persons in general, who from their age may be assumed to have the necessary discretion to protect themselves by refraining from the acts or omissions that will contribute to their injury, cannot be applied to infants whose immaturity, age, lack of judgment and discretion, render them incapable of self-protection. And, as to them, the negligence of another inflicting the injury will fix liability, though the act or omission of such child, if by an adult or by a child possessing the requisite discretion, would defeat a recovery. It is not the fact of the child's minority that disentitles one who has negligently injured him from claiming exemption from liability in such case, but of his immaturity of judgment and lack of the power or capacity to appreciate the danger to which he exposes himself. To the extent to which children are able to appreciate the danger to which they expose themselves, they are responsible for their contributory negligence. The law imposes upon minors the duty of giving such attention to their surroundings, and care to avoid danger, as may fairly or reasonably be expected from persons of their age and capacity.

It is now settled by an overwhelming weight of authority that a child is held, so far as he is personally concerned, only to the exercise of such degree of care and discretion as is reasonably to be expected from children of his immaturity of judgment by reason of age. No injustice is done to the defendant by this limitation of the defence of contributory negligence, since the rule itself is not established primarily for his benefit, and he can never be made liable if he has not been himself in fault. Thus, where one is driving a horse with ordinary care, at a rate of speed suited to the locality, he is, of course, not liable for an injury by the horse to a child who suddenly throws himself in the way, and is run over before the driver can prevent it. So, if a child, proceeding in reckless haste, however natural to his age, should rush against a railroad car while in motion, the driver of the car not seeing him, it is obvious that his own act is the sole cause of his injury; and even though he may be entirely free from blame, the most that can be said in his favor is that the case is one of inevitable accident; and the owner of the car is no more responsible for his injury than would have been the owner of a wall against which the child had thoughtlessly struck himself. It was held in some English cases that if a child's own

act directly brings the injury upon him, while the negligence of the defendant is only such as exposes the child to the possibility of injury, the latter cannot recover damages. But these decisions have been condemned in England, and are directly opposed to the current of American cases.

Everywhere, it would seem, a person over fourteen years of age is presumed to be capable of using some reasonable degree of care for his own protection; and in New York this has been drawn at twelve years. This, however, is a mere presumption, at all events, up to eighteen years, if not twenty-one; and the question is for the jury. It has been held that the division line, between responsible and irresponsible age, is not for the jury, but must be decided by the court, but the weight of authority is otherwise. In analogy to the rule which holds a child under seven years of age incapable of crime, some courts have also held them incapable of negligence; but it is generally held that this is not to be conclusively presumed. Juries may be depended upon not to overrule this presumption, except in perfectly clear cases. Some degree of care may justly be required even from children of six or seven years. But such a child is everywhere presumed to be incapable of contributory negligence. In nearly all the cases, the question of the power and the duty of any child, between three and twelve years of age, to exercise care for its own protection, is held to be for the jury. But in Massachusetts the question has been taken away from the jury in the case of a child of eight years and even five and a half years. And in New York a child over seven has been held responsible as a matter of law for wilful disobedience of proper orders. The true rule would appear to be that the court should take the question away from the jury, where the clear weight of evidence shows that the child had a capacity for self-protection, which it culpably omitted to use, in face of danger which it knew and sufficiently appreciated; but not otherwise. Subject to these qualifications, a child is responsible for that degree of care, and that only, which could reasonably be expected from him, considering his age, capacity and experience. See Shearman and Redfield on Negligence, 6th ed., pars. 70-73, where the American cases are collected in support of the text.

The law has laid down no definite age at which it can be said that a child has arrived at such a state of maturity as to be capable of exercising judgment and discretion, but it is said there are practically no cases holding that a child under six

years of age can be charged with negligence: 29 C. Y. C. 588. In *Sangster* v. *Eaton,* 25 O. R. 78, where a child two and a half years old was injured by a mirror in defendant's store falling upon him, it was admitted there could be no contributory negligence on the part of the infant. In *Gardner* v. *Grace* (1858), 1 F. & F. 359, the defendant was driving on the highway when the plaintiff, three and a half years of age, ran into the road and was knocked down and run over. Channel, B., said: "The doctrine of contributory negligence does not apply to an infant of tender years. To disentitle the plaintiff to recover it must be shown that the injury was occasioned entirely by his own negligence."

In *Ricketts* v. *Markdale,* 31 O. R. 610, a boy, under seven years of age, was playing on the village street and was killed by reason of logs on the highway. Ferguson, J., said: "Then as to the alleged contributory negligence of the unfortunate boy set up by the defence. In the excellent and exhaustive work, the Am. & Eng. Ency. of Law, 2nd ed., vol. 7, pp. 405 and 406, it is stated that 'children so young as to be *non sui juris* cannot be guilty of contributory negligence. And children who have attained an age where they are not wholly irresponsible are not required to exercise the same care and prudence that would be demanded of an adult similarly situated, but only the care of a child of equal age and ordinary childish care and prudence. And even where a child has reached years of discretion, and become, as a matter of law, responsible for his conduct, no higher degree of care will be exacted of him than is usually exercised by persons of a similar age, judgment and experience.' And at p. 408, 'Nor will a child negligently injured upon a railroad, or by defects in a public highway, or by dangerous machinery, or by explosives, or in any other way, be charged with contributory negligence, if, at the time of such injury, he was doing what might have been expected of an ordinary careful and prudent child of the same age, making all due allowance for the natural instincts of childhood.'"

A boy of twelve was accidentally injured by a shot from a gun fired by the defendant's son, also twelve years old. The jury found the defendant guilty of negligence and the infant plaintiff guilty of contributory negligence in passing in front of the gun instead of behind it. A Divisional Court held that the question of contributory negligence was properly left to the jury; that the infant plaintiff, having regard to his know-

ledge of firearms, was capable of contributory negligence. Boyd, C., said: "Age is the most important factor in the application of this rule. Want of ordinary care which might not disentitle a child of tender years to recover would so operate in the case of an older child. The point is neatly put in Eversley: 'The question is really whether an infant of tender years can be said, by reason of his want of experience and an incapacity to judge rightly of the probable result of his acts, to be guilty of negligence': Domestic Relations, 3rd ed., 801. As summed up in the last book of repute, Halsbury's Laws of England, Vol. 21, 453, we find: 'Where a child is of such an age as to be naturally ignorant of danger or to be unable to fend for itself at all, he cannot be said to be guilty of contributory negligence in regard to a matter beyond his appreciation,' but quite young children are held responsible for not exercising that standard of care which may reasonably be expected of them.

"The law as to infants on this head is well stated by Lord Low in *Cass* v. *Edinburgh and District Tramway Co.* (1900), Sess. Cas. 1068, 1076. The law is also discussed and the same conclusions reached by Field, J., in *Collins* v. *South Boston R. R. Co.* (1886), 142 Mass. 301.

"As to children over the age of criminal responsibility (seven years, see Criminal Code, sec. 17), and perhaps even younger, the alternatives for the jury would seem to be well expressed in a New York case: 'If you say that the child did what an ordinary careful child would have done, then it is not negligence. On the other hand, if the boy failed to adopt the means known to him to be effective in protecting against danger, and was injured thereby, he cannot recover': *Moebus* v. *Hirrmann* (1888), 108 N. Y. 349."

A boy nine years of age was killed while on a railway track. Garrow, J.A., "There is no hard and fast rule as to what may in civil matters be regarded as years of discretion. One child of ten may have more discretion or common sense than his brother at fifteen. In the present case the younger brother of seven, on seeing the passing freight train, sat down on the bank in safety and waited, while his elder brother, with less discretion, passed on to the place of danger and was killed.

"The rule is now, I take it, well established that where the facts appearing on the plaintiff's evidence are undisputed, *and admit of only one inference,* the Judge should deal with

the matter as one of law, and dismiss the action if, notwithstanding evidence of defendant's negligence, it appears that such negligence would have been harmless but for the plaintiff's own want of care. But if the facts upon which the deduction of the want of care on the part of the plaintiff depends admit of more than one inference, it is the province of the jury, and not of the Judge, to draw the proper inference: *Brown* v. *Great Western Ry.* (1855), 52 L. T. N. S. 622; *Wright* v. *Midland Ry.* (1884), 51 L. T. N. S. 539.

"In the present case it was for the jury to say whether upon the facts the deceased displayed on the occasion in question reasonable care, or such reasonable care as was to be expected from one of his tender years. See *Lynch* v. *Nurdin* (1841), 1 Q. B. 29, at p. 39:" *Tabb* v. *Grand Trunk R. R.* (1904), 8 O. L. R. 203.

A boy between seven and eight years of age was injured by the defendants. The Chief Justice of the Queen's Bench withdrew the action from the jury because the boy did not look before crossing the track. On appeal, Meredith, C.J.O., reading the judgment of the Court, said: "The boy was so young at the time of the trial the Judge did not permit him to be sworn. The question of contributory negligence is for the jury, and it was for the jury to say whether, having regard to his age and intelligence, the injured boy had not exercised that standard of care which might reasonably be expected of him. Even in the case of adults failure to look before crossing a railway track cannot be said as a matter of law to be contributory negligence. Whether or not it was such negligence, having regard to all the circumstances, it was for the jury to say": *Marks* v. *Toronto Ry. Co.* (1920), 18 O. W. N. 169.

To the same effect is *Gerber* v. *Boorstein,* 113 N. Y. App. Div. 808, where it is said the rule is well settled that the mere fact that a child (in this case a boy nine years of age) does not look both ways before attempting to cross a street does not constitute contributory negligence as a matter of law.

It is often a difficult question to determine when a child is presumed to know of the existence of a danger and be chargeable with the duty of avoiding it. In *Barretts* v. *Mouquin,* 125 N. Y. S. 1009, an intelligent girl, somewhat under four years of age, was sitting on a sidewalk in front of her parent's dwelling, when the wheels of the defendant's wagon passed over her legs, which were projecting beyond the

curb. The question was whether such a child could use sufficient care to justify an inference of negligence. The Court said that "to hold her capable of care she must have usable capacity (1) for some prudence and inclination therefor, in keeping traffic under observation; (2) for measuring in distance the relation of the wagon to the curb; (3) for apprehending that the proximity of the wagon to the curb was such that her protruding feet would fall within the intervening distance; and (4) ability to withdraw herself from the danger. It is not a case whether such a child can ever use care, but the facts in this case do not permit the inference that she had such ability to a degree that demanded care on her part."

Under somewhat similar circumstances where a girl eight years of age was injured, the question whether she was exercising such care as was reasonably expected of her was held for the jury: *O'Shaughnessy* v. *Suffolk Brewing Co.,* 145 Mass. 569.

A bright boy nine and a half years of age was injured while sitting on the edge of the sidewalk, with his legs extending across the gutter. This was held to be negligence as a matter of law: *Knebler* v. *New York,* 60 Hun. 584.

A boy twelve years of age was struck by an automobile when sitting in a toy-wagon at the side of a part of the street devoted to vehicles, and his leg broken. Latchford, J., held that the case fell within section 23 of The Motor Vehicles Act, and the onus of proving that the damage sustained did not arise from his negligence was upon the defendant. The question of contributory negligence does not appear to have been raised: *Hook* v. *Wylie,* 10 O. W. N. 15, 237.

"The next inquiry is to what extent this special protection of infants goes. There does not appear to be any definite English rule. In America the subject is discussed in *Nagle* v. *Allegheny Valley Ry. Co.,* 88 Pa. St. 35, 39; it was conceded that if the boy for whose death damages were sought, who was between fourteen and fifteen, were regarded as an adult, he had been guilty of rashness, which would have defeated the action. But the contention was that his tender years rendered him not responsible for negligence. The Court refused to leave this to a jury, holding that it was a question of law for themselves. They fixed the age of fourteen as that at which an infant is presumed to have sufficient capacity and understanding to be sensible of danger and to

have the power to avoid it. And this presumption ought to stand until it is overthrown by clear proof of the absence of such discretion and intelligence as is usual with infants of fourteen years of age": Beven on Negligence, Can. ed., 166.

The measure of responsibility varies with each additional year. It makes no sudden leap at the age of fourteen. That is simply the convenient age at which the law, founded upon experience, changes the presumption of capacity, and puts upon the infant the burden of showing his personal want of intelligence, prudence, foresight, or strength usual in those of such age: *Kehler* v. *Schwenk,* 114 Pa. St. 348.

It should be pointed out that when a parent or master sues, *for his own benefit,* to recover damages for the technical loss of service caused to him by the injury to a child or servant, the contributory negligence of the actual plaintiff, or his agent, is of course a good defence. And in such an action any contributory negligence of the child or servant, which would suffice to bar an action brought in his name, will also preclude a recovery by the parent or master. It is obvious that the decisions in such cases afford no support to the doctrine that the negligence of the parent is to be imputed to the child. The distinction between the two classes of cases is well illustrated in two Ohio decisions. A child bronght an action upon his own injuries, and the Court held his father's contributory negligence was no defence. The father brought another action upon the same injury, to recover for loss of service; and the same Court held his contributory negligence to be a complete defence: *Bellfontaine* v. *Snyder,* 18 Ohio St. 399; 24 Ohio St. 670.

In *Sangster* v. *Eaton,* 25 O. R. 78, Armour, C.J., said: "It may be prudent, however, in the present case, to avoid further difficulty, to submit the question to the jury, whether the mother was taking reasonably proper care of the child at the time the accident occurred, although in my view the negligence of the mother in this respect would not, under the circumstances of this case, prevent the recovery by the child: *Mills* v. *Armstrong,* 13 A. C. 1; *Martin* v. *Ward,* 14 Ct. Sess. Cas. 4th Series, 814; *Cosgrove* v. *Ogden,* 10 Am. Rep. 361."

In *Ricketts* v. *Markdale,* 31 O. R. 610, Boyd, C., discusses the origin of public highways in England and Ontario, and, after pointing out the statutory provisions as to the use of highways in this Province, says: "I deduce the conclusion that children may play in the highways when there is no pro-

hibitory local law, and where their presence is not prejudicial to the ordinary user of the street for traffic and passage.

"To the same effect is the American State law generally. Thus in *McGarvy* v. *Loomis* (1875), 63 N. Y. R., at p. 108, Church, C.J., said: 'That it is not unlawful, wrongful or negligent for children on the sidewalk to play, is a proposition which is too plain for comment.' And in *The Quincey Horse Co.* v. *Gnuse* (1889), 39 Ill. App., at p. 223, it is decided that the city streets are intended for the use of children as well as of vehicles, not merely as ways by which to get to school, or upon errands of business, but as places in which to play, consistently with the rights of others, and subject to risks for want of due care on their part.'"

And in *McGuire* v. *Spence* (1883), 91 N. Y. 303, it was held that when a child was injured, in consequence of an obstruction in the street, it was no defence to say that the child was playing on the street, instead of using it for purposes of travel.

While it is not negligence, as a matter of law, for a child to attempt to cross the street ahead of a team, yet the facts and attending circumstances may be such as to warrant no other inference than that the child failed to exercise due care and caution, in which case the Court will hold the child guilty of contributory negligence: *Gerber* v. *Boorstein,* 113 N. Y. App. Div. 808; *Johnson* v. *Kelleher,* 155 Mass. 125; *United Breweries Co.* v. *Bass.* 121 Ill. App. 299.

"It would seem that if children unreasonably and intentionally run into danger, they should take the risks, and that children as well as adults should use the prudence and discretion which persons of their years ordinarily have, and that they cannot be permitted with impunity to indulge in conduct which they know, or ought to know, to be careless, because children are often reckless and mischievous": *Collins* v. *South Boston Railroad,* 42 Mass. 301.

The principle here laid down was applied in *Hayes* v. *Norcross,* 162 Mass. 546, where a boy five and a half years old was injured by running against a slowly trotting horse, before the child had gone six feet, at a place other than a crossing. The Court said: "There is no view that can be taken of any of the testimony that would warrant a finding that he was ordinarily careful. That there may be other boys who carelessly expose themselves on the street does not help him in

this suit. The statement of care is the conduct of boys who are ordinarily careful."

It may well be that, in these cases, the negligence of the infant was primary rather than contributory; and that there was an absence of negligence on the part of the defendant.

A boy eleven years of age while crossing a street in front of an automobile running at a great speed, did not look either way. The Court held it was for the jury to say whether he exercised such care as would reasonably be expected from one of his age, judgment and experience: *Lynch* v. *Shearer,* 75 Atl. R. 88.

A girl eight years of age on her way to school, with her sister twelve years of age, was knocked down by defendant's horse and wagon. The Court held that, as a matter of law, persons crossing public streets are not bound to look both ways, either at a crossing or elsewhere, and the girl had the right to assume that the driver would not turn a sharp corner and run over her without warning: *Rottenberg* v. *Segelke,* 6 Miss. 3; affd. 148 N. Y. 725.

A boy, thirteen years of age, was playing "tag" in a public street, and ran on to or was struck by an automobile driven by the defendant. The Court held that it was contributory negligence, as a matter of law, for a boy of that age "to become so engrossed in play as to run across a city street and immediately in front of an approaching automobile without thought to look to see whether such a machine or other vehicle was approaching": *Cantanno* v. *James A. Stevenson Co.,* 172 N. Y. App. Div. 252.

Contributory negligence may be attributed to a boy eleven years of age who, while playing in a public street, is injured by suddenly turning and running in front of an automobile through his failure to look out for approaching vehicles: *Hargrave* v. *Hart,* 22 Man. R. 467. The case is also reported in 9 D. L. R. 521, where there is a valuable annotation on the law of contributory negligence of children.

MISCELLANEOUS NEGLIGENCE.

Skidding.—Skidding is not, as sometimes claimed, a mysterious happening, a sort of "act of God" beyond the control of the operator. It is a perfect definite result of certain physical forces, such as the speed of the car, its weight and distribution of weight, and the friction between the rear

wheels and the road. Some cars skid more easily than others. The tendency to skid may depend on the number of passengers and whether they are sitting in the front or rear seat. Wet, icy, or greasy roads and especially wet car tracks are potent and well-known dangers which may be diminished by the use of non-skid tires and tire chains and by reduction of speed. It is known that a sudden application of the brakes on a slippery pavement will almost inevitably cause the car to skid and swerve from its course, and clever racing drivers are accustomed to make use of this phenomenon in turning corners. The Courts have generally recognized these conditions and hold that the mere fact that the car skidded is no defence to the motorist, that his negligence is a question for the jury: Babbitt on Automobiles, 2nd ed., 234.

Where a person driving a motor vehicle with due care at a crossing, applied the brakes suddenly to avoid striking a pedestrian who ran in front of the car, and the act caused the car to skid and come in contact with another car standing at the curb, injuring such car, it was held the injury was the result of an accident for which the driver of the motor vehicle was not liable: *Moir* v. *Hart,* 189 Ill. App. 566.

But if the defendant is running his motor vehicle at an excessive rate of speed, he may be found negligent though the collision arises, in part, from the defendant's attempt to avoid children in the street: *Conlon* v. *Trenkhorst,* 195 Ill. App. 335.

A lamp erected on the pavement was knocked down by a motor bus skidding on it, the road being greasy, and the plaintiff injured. The trial Judge found that the driver was not guilty of any personal negligence, but he was of the opinion that it was well known that under certain circumstances motor vehicles are liable to skid, and, if they did skid, it was impossible to control them, and so the defendant was liable for negligently using the highway. On these findings the Divisional Court held it could not interfere: *Gibbons* v. *Vanguard Motor Bus Co.,* 25 L. T. R. 13.

But in *Parker* v. *London General Omnibus Co.* (1909), 101 L. T. 623, it was held that in such a case negligence must be proved and not assumed. To the same effect is *Wing* v. *London General Omnibus Co.* (1909), 2 K. B. 652. The plaintiff was a passenger in a motor bus owned by defendants, which skidded upon a greasy road and ran into an electric light standard. The plaintiff gave no evidence (beyond the

above mentioned facts) in the nature of negligence. It was apparently assumed, and not disputed, that motor cars, however well constructed, had a tendency to skid on a greasy road. The defendants called no witnesses except as to quantum of damages, and the jury found for the plaintiff. The trial Judge subsequently entered judgment for the defendants. The Court of Appeal held there was no evidence for the jury that the defendants allowing the car to run under the circumstances constituted a nuisance, and therefore the decision of the trial Judge was correct. Vaughan Williams, L.J., said: "I do not think that an accident resulting from the tendency of a motor omnibus, however well constructed and designed, to skid, is any evidence of negligence or a nuisance."

The skidding of an automobile may, however, clearly be the result of the driver's negligence, as when the pavement is slippery and he endeavors to make a quick turn, not called for by a sudden emergency confronting him: *Loftus* v. *Pelletier,* 223 Mass. 63. The speed at which he was driving is a material element in determining whether he was negligent: *Gilbert* v. *Southern Bell Telephone Co.,* 75 So. 315.

Along the side of a highway an open ditch had been constructed under the Municipal Drainage Act. A motor vehicle proceeding along the clay highway after a heavy rain attempted to turn from the highway into a lane. The car skidded into the ditch, overturned, and one of the occupants was killed. It was held that the failure to maintain a guard along the ditch was not in the circumstances negligence, and the Court said it was "want of a very apparent and necessary precaution for the owner to have proceeded without chains on his tires," and "that the want of such precaution might reasonably be considered the cause of the accident even if the municipality had been guilty of negligence": *Anderson* v. *Township of Rochester* (1919), 44 O. L. R. 301.

When one turns a corner on a wet pavement at such a rate of speed that the automobile skids and collides with another vehicle, when the driver of the automobile attempts to straighten his course, a finding of negligence may be justified: *Wright* v. *Young,* 160 Ky. 636.

Condition of Car.—Apart from statutory requirements it is the duty of one travelling on a public highway to have his conveyance in a reasonably safe condition, so as to avoid, as far as possible, injury to other travellers: *Welch* v. *Lawrence,* 2 Chitty 262; *Smith* v. *Smith,* 2 Pick. (Mass.) 621. This is

particularly true of motor vehicles, where, because of their speed, size and machinery, are more liable to cause damage if not kept in proper repair and condition.

The mere fact that some of the gearing gives way, or that some part of the vehicle breaks down, and injury results, is not negligence *per se: Doyle* v. *Wragg,* 1 F. & F. 7. If damages are sustained by reason of the breaking of the carriage of a traveller on the highway, the traveller is liable only on the principle of want of ordinary care: Thompson on Negligence, 81.

The fact that the machinery of the car acted wrongly on a previous occasion is some evidence of negligence on the part of the owner; but the fact that a chain on one of the wheels broke and wound around the axle and blocked the car, does not show negligence: *The European,* 10 L. R. Pro. Div. 99; *Albertson* v. *Ausbacher,* 102 Misc. (N. Y.) 527.

Where a car was in such a condition that it was impossible to regulate its speed, it was held it was a dangerous instrumentality on the highway: *Texas Co.* v. *Veloz,* 162 So. W. 377.

Operating upon a highway a motor car loaded in such a way that a horse drawing a buggy becomes frightened at it is not actionable negligence: *Pease* v. *Cochran,* 173 N. W. 158.

An automobile driver who, towing another car with a rope, leaving a certain distance between the two machines, is bound to take increased precautions; he should take the necessary means to inform drivers of other vehicles of the danger of the rope: *Laberge* v. *La Compagnie de Tramways,* 24 Rev. Leg. 133.

There is an imperative duty on the driver of a motor vehicle to have his car equipped with proper brakes. Where a statute required each motor vehicle to be equipped with good and sufficient brakes, it was held that the engine, which is frequently used as a brake, does not constitute a brake within the meaning of the requirements: *Wilmott* v. *Southwell,* 25 L. T. 22.

In speaking of defective brakes of an automobile, the Court applied the following principles to motor vehicle operation: "It is undoubtedly true that the defendant would not be held to answer for a latent defect in materials employed in the construction of the machinery of his automobile, which the usual and well recognized tests afforded by science and art

for the purpose failed to detect, nor for accidents by which injury is caused where skill and experience are not able to foresee and avoid them": *Johnson* v. *Coey,* 237 Ill. 88.

The operator may be negligent in not applying the emergency brake on discovering that the steering gear would not work, where there is evidence that the application of this brake would have stopped the car before reaching the plaintiff: *Fox* v. *Barekman,* 178 Ind. 572.

If the brakes are not in first class condition the driver is bound to operate his car at a slow speed, more especially when approaching crossings: *Houston* v. *Reecker,* 167 S. W. 301.

Where the driver of a car applies his brake so hard that he brings his car to a sudden stop, without any notice to the car behind him, and so causes a collision, this is actionable negligence: *Russell* v. *Kemp,* 95 Misc. (N. Y.) 582.

Failure to provide a motor vehicle with a proper horn is negligence: *Dussault* v. *Chartrand,* 54 Que. S. C. 488. And the owner may be convicted of aiding and abetting an offence if he sends his car out without a horn: *Provincial Motor Co.* v. *Dunning* (1909), 2 K. B. 599.

So the absence of lights on a motor vehicle while on a highway, may be negligence; and if the omission of this duty is one of the contributory causes to a collision with another vehicle, the driver may be liable in damages: *Roper* v. *Greenspon,* 272 Mo. 288; *Martin* v. *Herzog,* 176 N. Y. App. Div. 614.

One riding in the trailer of an auto truck, which he has hired, though offered a seat in the truck, assumes the ordinary risk of injury from the side motion of the trailer: *Buckingham* v. *Eagle Warehouse Co.,* 179 N. Y. S. 218.

Animals on Highway.—In *Higgins* v. *Searle* (1909), 100 L. T. 280, the plaintiff was driving a motor car along the highway when a sow belonging to the defendant rose suddenly from the side of the road just as a horse and van which were proceeding along the highway were about to pass the motor car. The result was the horse was frightened and shied in front of the motor car, and the plaintiff, endeavoring to avoid the horse, collided with the van. It was held the defendant was not liable for the damages to the motor car.

This was followed in *Heath's Garage* v. *Hodges* (1916), 2 K. B. 370, where Cozens-Hardy, M.R., said: "I am prepared to hold that in ordinary circumstances, in an ordinary highway, it is no breach of duty not to prevent harmless animals

like sheep from straying on the highway, and that it makes no difference whether the action is sought to be based on negligence or on a nuisance to the highway. An animal like a sheep, by nature harmless, cannot fairly be regarded as likely to collide with a motor-car; and the owner of the sheep cannot be held liable on that footing."

With these decisions compare *Turner* v. *Coates* (1917), 2 K. B. 670, where the injury was caused by a young, unbroken colt on the highway on a dark night. The plaintiff was riding a bicycle, when the colt, becoming startled at the light on the bicycle, suddenly ran across the road and collided with and injured the plaintiff. It was held the plaintiff was entitled to recover. The Court points out that it is the natural propensity of a colt to do just what was done here, and this distinguishes it from the case of an injury caused by a pig or a sheep on the highway. One who has had experience in motoring on rural highways may be inclined to think that, in this respect, sheep are just about as irrational as colts.

A colt was following its dam, which was one of a team being driven on the highway. The defendant was driving his automobile in the opposite direction and the colt jumped in front of the car and was injured. The Appellate Division allowed the defendant's appeal and the action of the owner of the colt was dismissed: *Stevens* v. *Saskatoon Taxicab Co.* (1909), 45 D. L. R. 763.

In *Townsend* v. *Butterfield,* 168 Cal. 564, an unbroken horse was being led along the highway by means of a rope, and it was said: "Highways are made and maintained for the free passage of persons and of their horses and cattle when properly controlled. There was no evidence that the method of controlling the unbroken horse by means of a rope or lariat fastened to his neck, while taking him along the highway, was an improper or careless method. The use of a rope for that purpose would seem to be a proper precaution and preferable to driving him along with no means of control or check."

It cannot be ruled as a matter of law that the failure of a pedestrian upon a main highway to carry a lantern after dark, even though leading horses, is want of due care: *Powers* v. *Loring,* 231 Mass. 459.

Where a horse while tied to a hitching post at the curb of the street was injured by the defendant's automobile, it was held that the doctrine of *res ipsa loquitor* placed the burden

on the defendant to disprove negligence: *Whitwell* v. *Wolf,* 127 Minn. 527.

Assuming a duty to exercise reasonable care to avoid injury to a dog in the street, it is not sufficient for the owner of the dog to prove that the dog was killed by an automobile: *Wallace* v. *Waterhouse,* 86 Conn. 546. To the same effect is *O'Hara* v. *Gould,* 84 N. J. L. 583, where it was said: "It appears that during the daytime the accident took place. A dark-colored automobile driven by the defendant passed in the street. The witness saw the dog in the road, and that it was run over by the automobile, which did not slow up, but was going at a moderate rate of speed. The witness afterwards saw the dog lying in the road. So far as the case shows, both automobile and dog were lawfully in the street. There is evidence of no careless driving. The mere fact that it ran over a dog is not sufficient to charge negligence, much less can it support a claim for wilful injury."

The driver of a motor vehicle travelling at a moderate speed may probably assume that a dog running at the side or in front of a car will exercise the ordinary instincts of such animals and keep out of danger: *Floweree* v. *Thornberry,* 183 S. W. 359.

When the driver of a motor vehicle deflects his course to avoid a dog in the highway, he may be found guilty of negligence if he comes into collision with another vehicle—he should prefer the safety of persons to dogs: *Massie* v. *Barker,* 224 Mass. 420.

Where cattle are trespassing on the highway the driver of an automobile owes them no duty except to use ordinary care to prevent their injury: *Armann* v. *Caswell,* 30 N. D. 406.

Damages.—Where a chattel has been injured by a negligent act, the damages are the cost of repairing it, the difference in value between the former worth and that of the chattel when repaired, and the damage sustained for loss of use. General damages are not allowed: *Chotem* v. *Porteous* (1920), 51 D. L. R. 507.

The cost of a machine is not a criterion of its market value, yet the price paid therefor shortly before the injury may be admissible as evidence of its market value: *Schall* v. *Northland Motor Co.,* 133 Minn. 214.

"It is a matter of common knowledge that automobiles in all stages of use and repair are being daily exchanged in barter and sales. If an automobile is totally destroyed, or if

an automobile suffers injuries, the damages to the owner from the destruction or injury of the machine, alone, cannot be more than his loss, which in the first instance is its value immediately before its destruction, and, in the second instance, is the difference in its value in its injured condition and its value before the injuries. To fix these values, the law refuses to leave it to the imagination of the owner of the injured property, or to the opinion which a jury may set up as the criterion of value, and which may vary in different cases with each jury, but has adopted the market value as the most tangible and the one which can be the most easily and certainly laid hold of": *Cincinnati* v. *Sweeney,* 166 Ky. 360.

The reasonable value of repairs to an injured automobile is frequently considered the proper measure of damages for the injury: "Evidence of the reasonable value of such repairs, made necessary by the injury, as were required to place the property in usable condition, as well as evidence of its reasonable market value when repaired, is competent, as bearing on the reasonable market value of the machine immediately after the injury. But if the property should be rendered, by reason of the repairs, more valuable than it was before the injury, then, of course, the full expenditure for repairs should not be at the expense of the defendant. On the other hand, if by reason of the injury the property has been rendered incapable of being made, by repairing it, as valuable as it was immediately before the injury, the plaintiff should not be required to lose this deterioration": *Southern Ry.* v. *Kentucky Grocery Co.,* 166 Ky. 94.

Only those repairs which are attributable as resulting from the accident in question are to be considered. It is the value, not the cost, of the repairs which is essential; if for some reason the repairs cost an excessive sum, the excess is borne by the owner. The reasonable cost of repairs is what an automobile man would, in accordance with the market and usual rates, charge for the work and material necessary. Mere proof of receipted bills for repairs is not sufficient to prove the plaintiff's case, but he must go farther and show that the sums paid represent the reasonable value of the repairs. It is not necessary, however, that the owner should have actually expended the money for the repairs; the obligation to pay may be sufficient. The owner is not permitted to speculate at the expense of the defendant in repairing the machine, and after repairing it once, tearing it to pieces and rebuilding because

of his own mistake. Nor can he make repairs at an expense greater than the value of the machine after it has been repaired: Huddy, 944, 945.

It is the duty of the owner of an injured automobile to use diligence in protecting his property so as not to aggravate the damage, and he is entitled to recover the reasonable expenses incurred in such preservation as damages. Thus, it is held that the expenses incurred in towing an injured automobile to a garage and the expense of storing it in a garage for a reasonable time while attempting to dispose of the machine, are proper elements of damage: *Gilwee* v. *Pabst Brewing Co.,* 195 Mo. App. 487.

The damages recoverable for injury to an automobile are not limited to repairs that are apparent, but include also the expense of a thorough examination of the car: *Sears* v. *Gowvre,* 52 Que. S. C. 186.

The fact that the owner of an automobile carries an insurance thereon as against accident and has collected, or may collect, such insurance moneys, is not admissible for the purpose of reducing the damages recoverable for the defendant's negligence: *Hill* v. *Condon,* 14 Ala. App. 332. And if such evidence is admitted, and a jury find against the defendant, a new trial will be ordered: *Lougheed* v. *Collingwood Shipbuilding Co.* (1908), 16 O. L. R. 64.

The Manitoba Court of Appeal went a step farther, and held that the mere asking of such a question, though the witness is not required to answer it and does not answer it, is sufficient to warrant the Court in setting aside a verdict for the plaintiff and ordering a new trial: *Hyndman* v. *Stephens* (1909), 19 Man. L. R. 187.

It would seem, however, that in cases under Lord Campbell's Act, where the amount to be recovered is the actual pecuniary loss to be sustained by those entitled under the statute, the rule may be different: *Millard* v. *Toronto Ry. Co.* (1914) 31 O. L. R. 526.

Imputed Negligence.

In *Thorogood* v. *Bryan* (1849), 8 C. B. 115, an action was brought under Lord Campbell's Act against the owner of an omnibus by which the deceased man was run over and killed. It was there held that a passenger is identified with the driver of a vehicle in which he is, although the driver is not his servant, but the servant of third parties.

This case was followed by some others, but although early subjected to severe criticism, it was not overruled until it came up for revision in the House of Lords in *Mills* v. *Armstrong, The "Berina"* (1888), 13 A. C. 1. Lord Watson, in his judgment, said: "It humbly appears to me that the identification upon which the decision in *Thorogood* v. *Bryan* is based has no foundation in fact. I am of opinion that there is no relation constituted between the driver of an omnibus and its ordinary passengers which can justify the inference that they are identified to any extent whatever with his negligence. He is the servant of the owner, not their servant; he does not look to them for orders, and they have no right to interfere with his conduct of the vehicle except perhaps the right to remonstrate when he is doing, or threatens to do, something that is wrong and inconsistent with their safety. Practically they have no greater measure of control over his actions than the passenger in a railway train has over the conduct of the engine-driver." He points out, however, that if the passenger actually assumes control over the driver's actions and thereby occasions mischief he will be responsible for the consequences of his interference.

In *Matthews* v. *London Street Tramways Co.*, 5 Times L. R. 3, the plaintiff was a passenger in an omnibus which collided with a car of the defendant company, whereby the plaintiff was injured; and, following the *Berina* case, it was held that as a matter of law it should have been made clear to the jury that the question for them was: "Did the negligence of the tramcar, in whole or in part, cause the accident?" And the fact that the omnibus was also negligent mattered not, and was no answer to the plaintiff's claim. See these cases discussed in *Coop* v. *Robert Simpson Co.* (1918), 42 O. L. R. 488, and *Godfrey* v. *Cooper* (1920), 46 O. L. R. 565.

A wife who is injured in a collision while riding in a motor vehicle driven by her husband may maintain an action for negligence, and the contributory negligence of her husband will not prevent her succeeding: *Brooks* v. *B. C. El. Ry.* (1919), 48 D. L. R. 90. Some fact other than the relationship must be shown in order that the negligence of the one shall be imputed to the other. In case the wife is exercising control over the movements of the vehicle, or the husband can be said to be the servant or agent of the wife, or if they are engaged in a common purpose or joint enterprise, then there is ground for the doctrine of imputed negligence. But the

additional circumstance that the wife is the real owner of the machine driven by her husband, does not impute his negligence to her: *Virginia Ry. & Power Co.* v. *Gorsuch,* 120 Va. 655.

Where the plaintiffs, husband and wife, claimed damages for the death of their son in a collision between an automobile driven and owned by the husband, the jury found negligence on the part of the defendants and contributory negligence by the male plaintiff. The defendants contended that the wife, being an occupant of the car, was equally guilty of contributory negligence. Kelly, J., said she was not responsible for her husband's negligence and was entitled to judgment although her husband failed: *Hoffman* v. *H. G. & B. El. Ry.* (1920), 18 O. W. N. 92.

The plaintiff wanted the defendant to accompany a hunting party, and the defendant induced the party to ride in his automobile to their destination. It was held the plaintiff and defendant were not engaged in a joint enterprise within the rule of imputed negligence. The court said: "I know of no rule of law that throws a mantle of protection over the tortious act of an associate in a joint enterprise or in a partnership. Suppose one person assaults his co-partner; is the wrongdoer immune from liability because they are engaged at the time of the assault in the partnership business?": *Williams* v. *Fournier* (1920), 180 N. Y. S. 860.

In an action by husband and wife to recover damages caused to the wife by reason of a defect in the highway, it appeared that the motor car was owned by the husband and was being driven by his son, a boy under the age of 16, and without a license to drive. The trial Judge found the driver guilty of contributory negligence, and held both the plaintiffs were so identified with him as to prevent a recovery. The judgment appears to go on the ground that the plaintiffs knew their son was prohibited from driving a motor vehicle on the highway and they could not recover damages growing out of his illegal act: *Roe* v. *Township of Wellesley* (1918), 43 O. L. R. 214. The judgment in this case may be supported on the principle of *Miller* v. *County of Wentworth,* 5 O. W. N. 317, affirmed 5 O. W. N. 851, where it was held that where the injury is the result of an accident to a car on a dangerous road, and the passenger knows of the danger, equally with the driver, and takes the risk, he cannot recover. See also Thompson on Negligence, 2nd ed., sec. 503.

If a guest or passenger is injured by reason of a collision with another vehicle, or on account of defects in the highway, and he has no control over the driver and is not guilty of contributory negligence, he will not be barred from a recovery merely because the driver was guilty of negligence. With special force does the rule apply where there is no family or business relationship between him and the driver, or owner of the motor vehicle: *Dale* v. *Denver City Tramway Co.,* 173 Fed. 787. And the fact that the owner of an automobile permits his guest to give some directions to the chauffeur as to the running of the machine, does not make the chauffeur an agent of the guest so as to charge his negligence to the guest: *Collins* v. *Standard Acc. Insc. Co.,* 170 Ky. 27. Thus the negligence of a gentleman driving an automobile will not be imputed to a young lady who is riding with him on a pleasure trip: *Turner* v. *United Railways,* 155 Mo. App. 513.

Two defendants owned a motor car. One of them, Lozina, was driving the car and, owing to his lack of skill, negligently drove the same in front of an approaching street car. The plaintiff was a guest in the car and was badly injured, and he sued both owners. The trial Judge said the main contention on the part of the defendants was that the plaintiff could not maintain the action unless he was a passenger for hire and that he had no greater right than a mere licensee. This contention was disposed of adversely by two decisions of the Court of Appeal in England: *Harris* v. *Perry & Co.* (1903), 2 K. B. 219, and *Karavias* v. *Callinicos* (1917), W. N. 323. See also *Lygo* v. *Newbold* (1854), 9 Ex. 302, 305: "A person who undertakes to provide for the conveyance of another, although he does so gratuitously, is bound to exercise due and reasonable care"; *Parlov* v. *Lozina & Ravlovich* (1920), 18 O. W. N. 139; 47 O. L. R. 376.

A person who gratuitously loans his car to a member of his own family for such member's particular pleasure or business is not liable for an accident thereafter happening: *Fallon* v. *Swackhamer* (1919), 226 N. Y., reversing 175 App. Div. 909; *Bilyen* v. *Beck* (1919), 178 N. C. 481.

As a general rule when the driver and occupant of a vehicle are engaged in a common purpose or joint enterprise, the negligence of the driver may be imputed to the occupant. The difficulty is in determining when such relation exists between the parties. In every case it may be

said that the parties may be engaged in the common enterprise of "riding," but that is not sufficient to bring the passenger within the rule: *Lawrence* v. *Sioux City,* 172 Iowa 320; *Chadbourne* v. *Springfield Ry. Co.,* 199 Mass. 574. Parties cannot be said to be engaged in a joint enterprise unless there is a community of interest in the object or purposes of the undertaking, and an equal right to direct and govern the movement of each other with respect thereto. Each must have some voice and right to be held in its control and management: *Denver Tramway Co.* v. *Orbach,* 172 Pac. 1063. It is not necessary that he exercise his right of control, but it is sufficient if he has the right of control: *Bryant* v. *Pacific El. Ry.* 174 Cal. 737.

Where a district nurse was injured while being driven by a doctor in his automobile, it was held that the negligence of the doctor was not necessarily to be imputed to the nurse: *Loftus* v. *Pelletier,* 223 Mass. 63.

But where two travellers in an automobile each participate in the running of a car, one owning and the other preparing it for the trip, they may be said to be engaged in a common enterprise: *Washington & O. D. Ry.* v. *Zell,* 118 Va. 755.

The matter came recently before our own Courts in *Dixon* v. *Grand Trunk Ry.* (1920), 47 O. L. R. 115. There the plaintiff and four others, being desirous of taking a drive in a motor-car, arranged that one of them, S., should procure the car, which he did by hiring it from a garage. S. was the only one of the party who could drive a car, and driving it came into collision with a railway train. The jury found the defendants guilty of negligence, but found contributory negligence by "those in charge of the auto." Meredith, C.J.O., delivering the judgment of the Court, said: "My view is that the five men had the control of the motor-car. It was hired by them, although Scott was the one who acted for his companions as well as for himself in hiring it. It was they who entrusted the driving to Scott. In my opinion the *Berina* case has no application if Scott in driving the motor-car was acting as the agent or servant of his companions. The five men in the motor-car were, in my opinion, the persons having control of it."

The obligation of a person who rides in the automobile of a third party, on the invitation of the owner, in order that he may show the driver the way is limited *prima facie*

to directing him along what streets he should proceed and what turnings he should take; he is under no obligation to point out obstacles or dangers in the route which would be apparent to any careful driver, and his failure to do so is not negligence: *Hunter* v. *City of Saskatoon* (1919), 48 D. L. R. 68. But if a passenger sees that the driver is running into danger which is known to the passenger but of which the driver is ignorant, reasonable care would require the passenger to give some warning to the driver or take some steps to avoid injury: *Brommer* v. *Pennsylvania R. Co.,* 179 Fed. 577. In such a case he cannot remain silent and then charge his misfortune to others. If the passenger actually gives a warning to the driver, and there is nothing further he can do to avoid the danger, the passenger cannot be charged with negligence: *Avery* v. *Thompson,* 103 Atl. 4.

The fact that the driver and occupant of a motor vehicle are closely related and members of the same family, does not affect the rule that the driver's negligence is not imputable to the occupant: *Gaffney* v. *City of Dixon* (1910), 157 Ill. App. 589; *Henry* v. *Epstein* (1912), 53 Ind. App. 265. If the occupant has the right of control over the operation of the motor vehicle and permits it to be negligently driven, he is chargeable with his negligent failure to exercise his right to require the driver to operate the car properly: *Bryant* v. *Pac. El. Ry.,* 164 Pac. R. 385; cited 46 O. L. R. p. 268.

One may be negligent if he knowingly drives with an intoxicated chauffeur. "Even while prosecuting a journey, if the driver becomes intoxicated so as to lose control of the vehicle, or is reckless, and this is known to the passenger, ordinary care requires the passenger to call upon the driver to stop and allow him to alight, or turn the management over to another capable of properly directing it, and if the passenger fails to exercise such care and is injured as a result of the negligence or recklessness of the driver and a third person, he may not have recourse to such third person, this being denied him because of his own negligence rather than upon the ground that the negligence of the driver is imputed to him": *Winston* v. *City of Henderson,* 179 Ky. 220; and see *Powell* v. *Berry,* 145 Ga. 696, and *Sutton* v. *City of Chicago,* 195 Ill. App. 261.

"In *Little* v. *Hackett,* 116 U. S. 366, which is the leading American case on this subject, and which has been followed by the American courts generally, the rule was established

that the contributory negligence of the driver of a public conveyance would not be imputed to a passenger. And this Court in *Union Pacific Ry. Co.* v. *Lapsley,* 51 Fed. 174, and *City of Winona* v. *Botzel,* 169 Fed. 321, has extended this rule to a person who accepts a gratuitous invitation of the owner and driver of a vehicle to ride with him, even if it is not a public conveyance. But an examination of the many cases on that question shows that the writers of the opinions are careful to except a passenger or guest, who with knowledge of the danger, remains in such dangerous position. . . The plaintiff, as a reasonably prudent man, must have known of the danger incident to riding in a motor car on a dark night, without lights, over roads with which neither the driver of the car, nor any of the persons with him in the car, were familiar. When with full knowledge of that fact the plaintiff remained in the car he was as guilty of negligence as the driver himself": *Rebillard* v. *Railroad Co.,* 216 Fed. 503.

This is the law as laid down in *Miller* v. *County of Wentworth* (1913), 5 O. W. N. 317, where the driver of a motor car attempted to drive down a dangerous hill, on a dark night, without lights. The plaintiff, a brother of the driver, was a passenger in the car. Middleton, J., said: "It is true the driver's negligence is not necessarily to be attributed to the passenger; but here the whole situation was as much known to the one brother as to the other. Each consented, I think improperly, to take the risk of making the descent in the darkness, and this negligence precludes either from recovering." Affirmed 5 O. W. N. 891.

A guest in an automobile is required to exercise ordinary care for his own safety and to reasonably use his faculties of sight and hearing to avoid danger; and it is the function of the jury to determine from the evidence in each case whether he used such care, and what the circumstances required: *Board of Commissioners Logan Co.* v. *Becher,* 98 Ohio 432.

PENALTIES.

24.—(1) Any person who violates any of the provisions of sub-section (1) or (2) of section 8, sub-section (1) of section 9, sub-section (2) of section 11, or sections 12 or 18, shall be liable for the first offence to a penalty not exceeding $50 or one week's imprisonment or both; for the second offence to a

penalty not exceeding $100 or one month's imprisonment or both, and for the third or any subsequent offence to imprisonment not exceeding six months. 2 Geo. V. c. 48, s. 24 (1); 3-4 Geo. V. c. 52, s. 7; 7 Geo. V., c. 49, s. 17; 9 Geo. V., c. 57, s. 6; 10 Geo. V.

(2) On a charge for a second, third or subsequent offence under this section, a conviction need not be shown to be for an offence against the same section, but a conviction for an offence against subsections (1) or (2) of section 8, sub-section (1) of section 9, or sections 12, 14 or 18 shall be deemed to be a prior conviction. 2 Geo. V. c. 48, s. 24 (2); 3-4 Geo. V. c. 52, s. 8.

24*a*. Every person who violates the provisions of section 14 of this Act shall, for the first offence, be imprisoned for a period not exceeding thirty days and not less than seven days, for a second offence for a period not exceeding three months and not less than one month, and for a subsequent offence for a period not exceeding one year and not less than three months.

By the Act of last Session (10-11 Geo. V.) sub-sec. (1) was amended by striking out the figures "14" and by adding section 24*a*.

Sub-sections 1 and 2 of sec. 8 refer to the markers on motor vehicles other than motor bicycles.

Sub-section 1 of sec. 9 prohibits the use of any number on a motor vehicle other than the marker.

Sub-section 2 of sec. 11 refers to reckless driving.

Sec. 12 prohibits racing on a highway.

Sec. 14 prohibits an intoxicated person driving a motor vehicle.

Sec. 18 refers to the duty of a person in charge of a motor vehicle in case of an accident.

Sec. 29 provides for penalties for the violation of "any of the provisions of this Act, or of any regulations made thereunder, where a penalty is not hereinbefore provided."

It is difficult to understand why sub-sec. (2) omitted any reference to sec. 11 (2). The same omission occurs in sec.

27. It would, therefore, appear that a person convicted for a second or third violation of sec. 11, the previous conviction or convictions would have to be for the same offence, *i.e.*, for a violation of some provision contained in sec. 11.

A previous conviction may be proved (*a*) by the production from the proper custody of the conviction itself, or (*b*) by a copy of the conviction certified by the Clerk of the Peace or other officer having charge of the record of the same: *R.* v. *Yeoveley* (1838), 8 A. & E. 806; *R.* v. *Ward* (1834), 6 C. & P. 366. See sec. 982 of the Criminal Code, and sec. 23 of the Canada Evidence Act.

There must be proof of the identity of the accused with the offender previously convicted: Cr. Code, sec. 982. It has been held that where the name and description are the same a presumption of identity arises which throws the onus on the accused to disprove the same: *Ex p. Dugan,* 32 N. B. R. 98; *R.* v. *Clark,* 15 O. R. 49. A magistrate cannot act on his own personal knowledge of identity: *R.* v. *Herrell,* 1 Can. C. C. 510.

The question whether the defendant had been previously convicted or not is within the jurisdiction of the magistrate on a charge for a second offence in a summary conviction matter, and his finding thereon on competent evidence is conclusive: *R.* v. *Brown* (1888), 16 O. R. 41.

The accused is entitled to know that he is being tried for a second offence, and the previous conviction should be set out in the information and summons, and if this is not done the accused can only be convicted for a first offence: *Rex* v. *Harry,* 31 Can. C. C. 288. But where the punishment is in the discretion of the trial Judge leave may be granted to the Crown, after verdict, to adduce evidence of previous convictions of the accused for the information of the Court in determining the punishment: *Rex.* v. *Rowluk,* 24 Can. C. C. 127. And see *R.* v. *Bonnevie,* 10 Can. C. C. 376.

On a summary trial the previous conviction must be charged on the information by analogy to section 857 and proved in accordance with section 963 of the Criminal Code: *R.* v. *Edwards* (1907), 17 Man. R. 288.

Upon the indictment the accused must in the first instance be arraigned only upon so much of the indictment as charges the subsequent offence, and if he pleads not guilty the inquiry is into the subsequent offence only, and if he is found guilty or pleads guilty, he shall then, and not before, be asked

whether he was previously convicted. If he denies previous conviction proof may then be given of a previous conviction or convictions: Sec. 963 Crim. Code.

It is not necessary that any judgment should have been pronounced against the accused on the first conviction: *R.* v. *Blably* (1894), 2 Q. B. 170.

The owner of a motor vehicle is responsible not only for the fines and penalties imposed by the Act, but also in damages for any violation of the Act or of any regulations provided by order in Council: *Mattei* v. *Gillies,* 16 O. S. R. 558. To the same effect is a decision under the New Brunswick Act: *Campbell* v. *Pugsley,* 7 D. L. R. 177. See *B. & R. Co.* v. *McLeod,* 7 D. L. R. 579, 18 D. L. R. 245, where *Mattei* v. *Gillies* was distinguished.

The owner of a motor car cannot be criminally liable if he was not in the car at the time of the offence and the machine was used without his knowledge or consent: *Commonwealth* v. *Bacon,* 24 Montg. L. Rep. (Pa.) 197. Liability may, however, be imposed when the owner is controlling the operation of the car, or he may be liable on the theory that he was an accessory to the commission of the offence. An automobilist was convicted of unlawfully driving his car at a speed dangerous to the public. There was a conflict of evidence as to whether the car was being driven by the owner or by a lady seated by his side in the car. The Court of Appeal, without deciding who was driving the car, dismissed an appeal from the conviction, on the ground that if the lady was driving she was doing so with the consent and approval of the owner, who must have known that the speed was dangerous, and who, being in control of the car, could and ought to have prevented it. The Court found there was evidence on which the appellant could be convicted of aiding and abetting the commission of a crime: *Du Cros* v. *Lambourne* (1907), L. J. K. B. 50.

And in a Massachusetts case it was held that where the chauffeur was driving the car at an illegal speed while the owner was in the tonneau there was *prima facie* evidence that the owner, having power to control the machine, either knew or allowed it to be illegally run, and was, therefore, guilty; *Commonwealth* v. *Sherman,* 191 Mass. 439. And see section 28, which makes an employer liable where he is present in the motor vehicle.

An attempt to do grievous bodily harm to the other occupants of an automobile may be found from evidence of reck-

less driving, the question of intent being one for the jury: *Rex* v. *McCarthy* (1917), 41 O. L. R. 153.

Driving recklessly, driving at a speed dangerous to the public, and driving in a manner dangerous to the public, are separate offences: *R.* v. *Cavan Justices* (1914), 2 Ir. R. 150, following *R.* v. *Wells,* 68 J. P. 392.

On a charge against the owner of a motor car it is unnecessary to do more than allege that the driver has committed an offence under the statute. The conviction is good although it does not particularize which of the offences enumerated under the statute has been committed: *Ex p. Beecham* (1913), 3 K. B. 45.

Driving an automobile without a light is "an offence in connection with the driving of a motor car": *Ex p. Symes,* 103 L. T. 428. But allowing a motor car to stand on a highway so as to cause an unnecessary obstruction thereof is not such an offence: *Rex* v. *Yorkshire* (1910), 1 K. B. 439.

A person driving an automobile must stop when signalled or called upon to do so under penalty of a fine, under the Quebec Motor Vehicles Act. It was held that the driver must stop although the officer making the signal is not in official uniform or exhibiting his badge of office: *Collector of Revenue* v. *Auger,* 25 Can. C. C. 412.

DISQUALIFYING PROFESSIONAL DRIVERS.

25.—(1) A Police Magistrate or Justice of the Peace before whom a person is convicted of an offence under this Act, if the person convicted is required to hold a license under section 4 and does not hold such license, may declare him disqualified to hold such a license for such time as the Police Magistrate or Justice of the Peace thinks fit and shall so report with the certificate of the conviction to the Minister of Public Works and Highways. 6 Geo. V., c. 47, s. 3.

(2) If the person convicted holds a license issued under section 4, the Police Magistrate or Justice of the Peace shall cause particulars of the conviction, if for an offence against section 4, sub-sections (1) or (2) of section 8, sub-sections (1) or (2) of section 9, sections 11, 12, 14, 16, 17 or 18 to be endorsed upon

such license, and if such conviction is a third conviction, shall confiscate such license and any badge issued therewith, and shall forward the same with the certificate of the conviction to the Minister of Public Works and Highways. 6 Geo. V., c. 47, s. 3.

(3) A person so convicted if he holds a license issued under section 4 shall produce the license within a reasonable time for the purpose of endorsement, and if he fails to do so shall be guilty of an offence under this Act. 2 Geo. V., c. 48, s. 25.

What is a "reasonable time" in any case depends on the circumstances of that particular case: *Smith* v. *Pelton,* 151 Cal. 394. It is such promptitude as the situation of the parties and the circumstances of the case will allow. It never means an indulgence in unnecessary delay or in a delay occasioned by a vain and fruitless effort to do the act required: *Frech* v. *Lewis,* 218 Pa. 141. It means that the party shall do the act as soon as he conveniently can. What is a "reasonable time" is generally a mixed question of law and fact, not only where the evidence is conflicting, but even in some cases where the facts are not disputed: *Claus-Shear Co.* v. *Lee,* 140 N. C. 552.

The production of a license to drive a motor car to a constable is *prima facie* evidence that it was issued to the person producing it, and that the particulars contained in it refer to him: *Martin* v. *White* (1910), 1 K. B. 665.

DUTY OF MAGISTRATE ON CONVICTION.

26.—(1) A Police Magistrate or Justice of the Peace who makes a conviction under this Act shall forthwith certify the same to the Minister of Public Works and Highways, setting out the name, address and description of the person so convicted, the number of the permit of the motor vehicle with which the offence was committed, the number of the section of the Act contravened and the time the offence was committed, and if such offence was committed by a person licensed under section 4 the number of the license and the name, address and description of his employer, and if three such convictions for an

offence against sub-sections (1) or (2) of section 8, sub-section (1) of section 9, or sections 12, 14 or 18, are made against the same person, the permit of the motor vehicle with which the offence, for which such third conviction was made, was committed, or the license issued under section 4, or both, may be cancelled and the offender shall not be entitled to a permit or license for a period of two years thereafter. 2 Geo. V., c. 48, s. 26 (1); 3-4 Geo. V. c. 52, s. 9; 6 Geo. V., c. 47, s. 3.

(2) The Police Magistrate or Justice of the Peace shall be entitled to add to the costs of the conviction twenty-five cents for his costs of the certificate.

(3) A copy of the certificate, certified by the Minister of Public Works and Highways or Deputy Minister of Highways under the seal of the Department of Public Highways, shall be *prima facie* evidence of the conviction. 6 Geo. V., c. 47, s. 9.

(4) The Police Magistrate or Justice of the Peace shall be entitled to add to the costs of conviction, one dollar to be payable to the complainant, in the case of any person convicted of an offence under sub-section (1) of section 4, or section 7, or sub-section (1) of section 8, where such offence has been committed on or after the 15th day of May in any year. 7 Geo. V., c. 49, s. 18.

"Forthwith," when used in reference to time, is generally construed to mean without delay: *Bottle Co.* v. *Kerr,* 9 Cal. App. 527. It depends on the circumstances and the act to be performed: *Lewis* v. *Curry,* 156 Cal. 93.

In *Prairie City Oil Co.* v. *Standard Mutual Fire Ins. Co.,* 14 W. L. R. 41, 380, it was said that the words "forthwith" and "immediately" have the same meaning. They are stronger than the expression "within a reasonable time," and imply prompt, vigorous action without any delay; and whether there has been such action is a question of fact, having regard to the circumstances of the particular case.

IMPOUNDING MOTOR VEHICLE.

27.—(1) In the event of a third or subsequent conviction under sections 3, 4, 12, 13, 14 or 18, the motor vehicle driven by the person convicted at the time of committing the offence of which he was convicted, shall be seized, impounded, and taken into the custody of the law for a period of three months. 2 Geo. V., c. 48, s. 27 (1); 3-4 Geo. V., c. 52, s. 10.

(2) Such votor vehicle shall be stored where the convicting Police Magistrate or Justice of the Peace shall direct, and all costs and charges for the care or storage thereof shall be in lien upon such motor vehicle, and the same may be enforced in the manner provided by *The Mechanics' and Wage-Earners' Lien Act.*

(3) If the person so convicted gives sufficient security to the convicting Police Magistrate or Justice of the Peace, by bond, recognizance, or otherwise, that such motor vehicle shall not be operated upon any highway during such period of three months, the same may be delivered to the person so convicted or the owner thereof, and if such motor vehicle is operated upon a highway during such period, it shall be deemed to be operated without a permit. 2 Geo. V., c. 48, s. 27 (2-3).

A seizure contemplates a forcible dispossession of the owner: *Hale* v. *Hental,* 201 U. S. 43. In order to make a valid seizure of tangible property it is necessary that the officer should take the property into actual possession: *Fluker* v. *Bullard,* 2 La. Ann. 338.

In legal phraseology "impound" is to take into the custody of the law. Thus, a Court will sometimes impound a suspicious document produced at the trial. When applicable to an article like an automobile it implies placing it in an enclosed place: *Thomas* v. *Harris,* 1 Man. & G. 703.

WHEN OWNER MAY BE CONVICTED.

28. If the employer of a person driving a motor vehicle for hire, pay or gain, is present in the motor

vehicle at the time of the committing of any offence against this Act, such employer as well as the driver shall be liable to conviction for such offence. 2 Geo. V., c. 48, s. 28.

For the meaning of "hire, pay or gain," see notes to section 4, *ante*.

PENALTY WHERE NOT OTHERWISE PROVIDED.

29. Any person who violates any of the provisions of this Act or of any regulation made thereunder, where a penalty for the offence is not hereinbefore provided, shall incur a penalty not exceeding $10 for the first offence, not exceeding $20 for the second offence, not exceeding $30 for the third offence, and not exceeding $50 for any subsequent offence. 2 Geo. V., c. 48, s. 29; 3-4 Geo. V., c. 52, s. 11.

Sec. 24 provides for penalties for violation of the provisions of certain specific sections of this Act. This section provides the penalties for the violation of any provisions of the Act or of any regulation made thereunder, where no other provision is made therefor.

APPLICATION OF PENALTIES.

30. Where a constable or other officer of a municipality is the prosecutor any penalty imposed under this Act shall, when received, be paid over by the convicting Police Magistrate or Justice of the Peace to the treasurer of the municipality. 2 Geo. V. c. 48, s. 30.

The section contemplates that the penalty shall be paid over forthwith after receipt thereof by the magistrate.

ARRESTS BY PEACE OFFICER.

31.—(1) Every peace officer who on reasonable and probable grounds believes that an offence against any of the provisions of sub-sections (1) or (2) of section 8, sub-section (1) of section 9, sub-

sections (1) and (2) of section 11, or section 12, 14 or 18 has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, may arrest such person without warrant, whether such person is guilty or not. 2 Geo. V. c. 48, s. 31 (1); 3-4 Geo. V. c. 52, s. 12; 7 Geo. V. c. 49, s. 19.

(2) Every person called upon to assist a peace officer in the arrest of a person suspected of having committed any such offence may assist if he knows that the person calling on him for assistance is a peace officer, and does not know that there are no reasonable grounds for the suspicion.

(3) Every person may arrest without warrant any person whom he finds committing any such offence. 2 Geo. V. c. 48, s. 31 (2-3).

"Peace officer": see section 2, *ante*.

"Reasonable and proper grounds." A man is not bound before instituting criminal proceedings to see that he has such evidence as will be legally sufficient to secure a conviction. In *Dawson* v. *Vansandan* (1863) 11 W. R. 516, the defendant had preferred a charge of conspiracy against the plaintiff on the evidence of an alleged accomplice, and it was held that he might well have reasonable and probable cause. "An accomplice or tainted witness may give evidence sufficient to make out a *prima facie* case and warrant the preferring of a criminal charge, thought it might not be sufficient evidence upon which to convict." Neither is it necessary that the defendant should act only on legal evidence and inquire into everything at first hand. It is sufficient if he proceeds on such information as a prudent and cautious man may reasonably accept in the ordinary affairs of life: Clerk and Lindsell, 651, 652. But the peace officer must honestly believe in the commission of the offence and the guilt of the accused, and he must not act from any improper motive. The proper motive for a prosecution is, of course, a desire to secure the ends of justice.

"Finds." Under some circumstances "finds" is synonymous with "discovers," but that is not the meaning here intended. It means that the offence must be committed in

view of the person arresting the offender. A statute enacted that any person *found* committing a certain offence might be taken into custody without a warrant, and it was held that "found" there meant that the party must be seen committing the offence: *Simmons* v. *Millengen,* 15 L. J. C. P. 102.

At common law a constable is not justified in imprisoning a person in the belief that he has committed a misdemeanour: *Griffen* v. *Coleman,* 4 H. & N. 265.

DETAINING VEHICLE.

32. A peace officer or other person making an arrest without warrant may detain the motor vehicle with which the offence was committed until the final disposition of any prosecution under this Act, but such motor vehicle may be released on security for its production being given to the satisfaction of a Justice of the Peace. 2 Geo. V. c. 48, s. 32.

Detain means to hold or keep in custody. Compare the language of section 27. This section and section 33 contemplate only a temporary detention, no provision being made for storage. The amount of the security is in the discretion of the Justice of the Peace, and may be in cash or by bond. The security should be left with the Justice of the Peace who disposes of the complaint.

ARRESTS WITHOUT WARRANT.

33. A peace officer or other person making an arrest without warrant shall with reasonable diligence take the person arrested before a Justice of the Peace to be dealt with according to law. 2 Geo. V. c. 48, s. 33.

"Reasonable diligence" would seem to mean nothing more than ordinary diligence: *Western Union Tel. Co.* v. *Gilliland,* 130 S. W. 212.

APPLICATION OF SUMMARY CONVICTIONS ACT.

34. The penalties provided by this Act shall be recoverable under the *Ontario Summary Convictions Act.* 2 Geo. V. c. 48, s. 34.

REWARDS FOR CONVICTIONS.

35. By-laws may be passed by the councils of all municipalities for paying, on the conviction of the offender and on the order of the Judge or Police Magistrate before whom the conviction is had, a reward of not less than twenty dollars to any person who pursues and apprehends, or causes to be apprehended, any person stealing a motor vehicle within the municipality;

(*a*) The amount payable shall be in the discretion of the judge or police magistrate, but shall not exceed the amount fixed by the by-law. 9 Geo. V. c. 57, s. 7.

It sometimes happens that informations were laid against parties residing in a distant part of the Province, for violations of some of the provisions of the Motor Vehicles Act, more especially for speeding on the highway. The only evidence as to the ownership of the offending motor vehicle was the number of the marker, and it was no unusual thing for the constable, or other party, to make a mistake in the number. The result was that innocent persons were compelled to either travel a great distance, at inconvenience and expense, to prove their innocence, or pay a fine and costs.

To obviate this the Motor Vehicles Amendment Act, 1918, contains the following provisions:

FROM THE MOTOR VEHICLES AMENDMENT ACT, 1918.

8 Geo. V. c. 37, s. 10.

10.—(1) If any owner of a motor vehicle is served with a summons to appear in a county other than that in which he resides for an offence against this Act, and his defence is that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official marker, then and in that case only he may appear before a Justice of the Peace in the county in which he resides and in the same manner as if he

were being tried for an offence against this Act, give evidence by himself and corroborated by the evidence of at least two other credible witnesses that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official marker.

(2) The said Justice, if satisfied of the truth of such evidence, shall forthwith make out a certificate in the form set out as Schedule "A" to this Act, and forward the same by registered letter post to the Justice before whom the summons is returnable.

(3) The costs of a Justice for hearing such evidence and for giving such certificate shall be $1.25, which shall be payable forthwith by the defendant.

(4) The Justice before whom the summons is returnable shall, upon receiving such certificate, thereupon dismiss the charge unless he has reason to believe that the testimony is untrue in whole or in part, in which case he may adjourn the case and again summon the defendant, who shall then be required to attend before him at the place and time mentioned in the summons.

SCHEDULE "A."

CERTIFICATE OF JUSTICE REFERRED TO IN SECTION 10.

I (name of Justice), a Justice of the Peace in and for the County of , hereby certify

1. That (name of defendant), of the of , in the county of (occupation), this day appeared before me and produced to me a summons issued by (name of Justice issuing summons), a Justice of the Peace in and for the county of , for an offence against the *Motor Vehicles Act,* said to have been committed with

respect to a car bearing the official marker number for this year, said offence being alleged to have been committed on the of in the county of on the day of .

2. That the said (name of defendant) has deposed before me that neither he nor his motor vehicle was at the said place on the said day of , 19 , and that the summons must have been issued against him through an error of the informant as to the number on the official marker, and his testimony in this respect has been corroborated by the testimony of two credible witnesses, namely (here insert the name of two witnesses),

3. The depositions of the said defendant and of the witnesses in paragraph two of this certificate referred to are attached hereto.

4. That I am satisfied of the truth of the testimony given before me this day by (name of defendant and two witnesses), and give this certificate in pursuance of sub-section (2) of section 10 of the *Motor Vehicles Amendment Act, 1918.*

Dated at , this day of .

.....J.P.

Note.—(Attach depositions of defendant and witnesses to this certificate).

A "credible witness" means a witness not incapacitated by mental imbecility, interest or crime: *Ryan* v. *Devereux,* 26 U. C. R. 100. When the "credibility" of a witness is spoken of, it refers only to his integrity and the fact that he is worthy of belief. The term does not imply that he has intelligence, or knowledge, or opportunity for knowledge of the particular facts of the case: *Madden* v. *Taylor Coal Co.,* 133 Iowa 699. It is one who, being competent to give evidence, is worthy of belief: *Peck* v. *Chambers,* 44 W. Va. 270.

It would be for the Justice before whom the evidence is given, and not for the Justice who issues the summons, to decide upon the question of credibility.

THE CRIMINAL CODE AND MOTOR VEHICLES.

The provisions of the Criminal Code of Canada, having particular relation to motor vehicle traffic, are sections 285, 285*a*, 285*b* and 377*a*.

Section 285 of the Criminal Code of Canada reads as follows:

285. *Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage, motor vehicle, automobile or other vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person.*

Racing.—See notes to section 12 of the Motor Vehicles Act, and section 7 of the Highway Travel Act.

Wilful Misconduct.—Wrong conduct, wilful in the sense of being intended, but induced by mere honest forgetfulness or genuine mistake, does not amount to wilful misconduct: *Gordon* v. *Great Western Ry. Co.* (1881), 8 Q. B. D. 44. What is meant by "wilful misconduct" is misconduct to which the will is a party; it is something opposed to accidental or negligent; the *mis* part of it, not the conduct, must be wilful: Per Bramwell, L.J., *Lewis* v. *Great Western Ry.* (1878), 3 Q. B. D. 195.

In *Forder* v. *Great Western Ry.* (1905), 2 K. B. 535, Lord Alverstone, C.J., said: "I am quite prepared to adopt, with one slight addition, the definition of wilful misconduct given by Johnson, J., in *Graham* v. *Belfast & Northern Ry.* (1901), 2 Ir. R. 137, where he says: 'Wilful misconduct in such a special condition means misconduct to which the will is a party as contradistinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is misconduct on his part in the existing circumstances to do, or fail to omit to do (as the case may be), a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure or omission regardless of circumstances.' . . The addition which I would suggest is, 'or acts with reckless carelessness, not caring what the result of his carelessness may be.'"

There must be actual knowledge, or that which is esteemed in law as the equivalent of actual knowledge, of the peril of the person injured, coupled with a conscious failure to act to the end of averting the injury. Mere violation of a statutory duty is but simple negligence, and does not constitute "wilful or wanton misconduct": *Smith* v. *Central Georgia Ry.*, 165 Ala. 407.

"Wilful neglect" is not a very appropriate phrase. Conduct cannot be both wilful and negligent, as negligence involves inattention, and wilfulness involves attention.

Wilful neglect consists of a failure on the part of the party charged to use reasonable care to avoid an accident after acquiring knowledge that it is impending: *Teel* v. *St. Paul City Ry.*, 96 Minn. 379. It does not include the element of malice, but is a reckless disregard for the safety of the property or person of another, by failure after discovering the peril to prevent the injury: *Havel* v. *Minn. & St. L. Ry.*, 120 Minn. 195.

To sustain a charge under this section for causing bodily harm by wilful misconduct or neglect in driving a motor vehicle, some anterior wilful misconduct or wilful negligence leading up to the collision must be shown; wilful misconduct or wilful neglect is not to be inferred from the mere fact of a collision: *R.* v. *Wilson,* 32 Can. C. C. 96; 50 D. L. R. 117.

A bicycle is a "vehicle" under this section: *R.* v. *Parker,* 59 J. P. 793; *R.* v. *Wilson, supra.*

Where a person drives an automobile on a city street at an excessive rate of speed, knowing that the motor is in bad working order, that circumstance is evidence that the act is wanton, and a conviction for causing personal injury by wanton and furious driving was found, and the Court of Appeal (Ontario) refused to allow an appeal from the conviction: *R.* v. *Seager* (1909), 16 Can. C. C. 483.

The owner of a motor car who is sitting next to the driver who proceeds at a dangerous speed, is presumed to be aware of such dangerous speed, and may be held guilty of abetting a violation of the law: *Du Cross* v. *Lambourne,* 22 L. T. R. 3.

The offence of negligent driving does not depend upon the state of the traffic actually at the moment when the driving is taking place. There need be no direct evidence that any particular person or vehicle using the highway was interrupted, interfered with, incommoded or affected by reason of the speed of a car. A car may be driven to the common

danger of passengers although no passengers were actually endangered: *Mayhew* v. *Sutton* (1901), 86 L. T. 18.

Though it is a separate offence to drive at a speed dangerous to the public, speed is an element which can be taken into consideration when the charge is one of driving to the danger of the public: *Hargreaves* v. *Baldwin* (1905), 93 L. T. 311.

Evidence may be admitted to show the general nature of the traffic on the road in question, *i.e.*, the traffic generally on the road, but not on it at the actual moment when the car was being driven: *Elwes* v. *Hopkins* (1906), 2 K. B. 1.

A person who warns motorists of the existence of a "police trap," and so causes them to slacken speed, is not obstructing the police in the execution of their duty: *Bastable* v. *Little* (1906), 23 T. L. R. 38; 21 Cox. C. C. 354.

285a. *Whenever, owing to the presence of a motor car on the highway, an accident has occurred to any person or to any horse or vehicle in charge of any person, any person driving the motor car shall be liable on summary conviction to a fine not exceeding fifty dollars and costs or to imprisonment for a term not exceeding thirty days if he fails to stop his car and, with intent to escape liability, either civil or criminal, drives on without tendering assistance and giving his name and address.*

See the decisions collected under section 18 of the Motor Vehicles Act.

285b. *Every one who takes or causes to be taken from a garage, stable, stand, or other building or place, any automobile or motor car with intent to operate or drive or use or cause or permit the same to be operated or driven or used without the consent of the owner shall be liable, on summary conviction, to a fine not exceeding five hundred dollars and costs or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.*

This section is not an amendment of the larceny or theft part of the Criminal Code, but an addition to a section dealing with injury caused by negligent driving of motor vehicles; and there is nothing to indicate that Parliament intended the

new offence to be "a theft": *Hirschman* v. *Beal* (1916), 38 O. L. R. 40.

A garage has been said to be the modern substitute for the ancient livery stable. These garages occupy with relation to automobiles the same relation that stables do with regard to horses, and stables have not been held to be nuisances": *Diocese of Trenton* v. *Toman,* 74 N. J. Eq. 702.

A garage built to be used by the tenants of an apartment house, although it may yield an income, is not within the meaning of the term "garages to be used for hire or gain" in section 410 of the Municipal Act. What is there meant is rather a livery where an automobile may be kept by any transient or traveller: *Toronto* v. *Delapante,* 5 O. W. N. 69.

377a. *Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding two years and not less than one year, who steals any automobile or motor car, and the provisions of section one thousand and thirty-five shall not apply or extend to any person convicted of an offence under the provisions of this section.* 9-10 Geo. V., c. 46, s. 9.

Where a person was convicted of an indictable offence punishable with inprisonment for five years or less, he might, under the provisions of section 1035 above referred to, be fined in lieu of any punishment otherwise authorized. This privilege is now taken away in case the theft is of an automobile or motor car.

AN ACT TO REGULATE TRAVELLING ON PUBLIC HIGHWAYS AND BRIDGES.

R. S. O. 1914, c. 206. Amended by 6 Geo. V., c. 46; 7 Geo. V., c. 48; and 8 Geo. V., c. 36.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

TITLE.

1. This Act may be cited as *The Highway Travel Act*. 2 Geo. V., c. 47, s. 1.

The origin of The Highway Travel Act appears to be "An Act to Regulate Travelling on Public Highways," 18 Vict. c. 138, and, except for the provisions made necessary by the user of the highways by modes of conveyance then unknown, that Act was practically the same as the present Act.

A highway has been defined to be a road which every citizen has a right to use. Its object is to facilitate communication among men and the transportation of goods. But being open to the travel of the public generally, it is evident that this object would be liable to be defeated unless such travel were subject to some certain rules and regulations. One of the most usual incidents of travel upon highways is the meeting and passing of vehicles and teams. To prevent collision and secure travel from interruption, it is necessary that there should be some certain rule in regard to their passing. This rule has been called "the law of the road." In England the law of the road was established by custom, and there the rule is to turn to the left, which is the reverse of the law in Ontario and most of the other provinces.

INTERPRETATION.

2. In this Act "vehicle" shall include a vehicle drawn, propelled or driven by any kind of power, including muscular power, but not including the cars of electric or steam railways running only upon rails. 7 Geo. V., c. 48, s. 1.

Vehicle.—This would include a bicycle. Compare section 2 (*b*) of The Motor Vehicles Act, which does not include vehicles propelled or driven by muscular power.

VEHICLES MEETING ON HIGHWAY.

3.—(1) Where a person travelling, or being upon a highway in charge of a vehicle, meets another vehicle he shall turn out to the right from the centre of the road allowing to the vehicle so met one-half of the road.

(2) Where a person travelling, or being upon a highway in charge of a vehicle, meets a person travelling upon a bicycle or tricycle he shall, where practicable, allow him sufficient room on the travelled portion of the highway to pass to the right. 2 Geo. V., c. 47, s. 3.

(3) Where a person travelling or being upon a highway in charge of a vehicle or on horseback meets another vehicle or person on horseback at a cross-road or intersection, the vehicle or horseman to the right hand of the other vehicle or horseman shall have the right of way. 7 Geo. V., c. 48, s. 2.

Section 3 of The Alberta Highways Act is practically the same as section 3 of the Ontario Act. In a case where the Alberta Act came up for construction it was held that the "centre of the road" means the centre of the road allowance, and not necessarily the centre of the commonly travelled track, or metalled part of the highway. Stuart, J., said: "Does the term 'centre of the road' refer to the centre of that portion of the road allowance, namely, the 66 feet, which has been prepared by the public authorities for the use of vehicles, or does it mean the centre of the travelled or worn double track which has been created by the passage of vehicles? One very strong argument in favor of the first interpretation lies in this, that the location of the worn and smoothed track will vary from week to week and month to month, according as chance may lead people to go upon one part of the graded highway or another, while the location of the centre of the road, according to the first interpretation,

will be a permanent fixed place, at least until the highway authorities, in the course of imprisonment, shift the position of the grade. There will also be for a time, after a rain storm or a snow storm, at least until the worn track becomes definitely fixed, a good deal of uncertainty as to where it should really be taken to be." *Rex* v. *Hurt* (1919), 32 Can. C. C. 21.

It is submitted this is not the proper construction to be placed upon the section. It sometimes happens that, in city streets, the centre line of that portion of the highway set apart for vehicular traffic is not the centre line of the highway, and that the true centre line may be so near the curb as not to allow room for a vehicle to pass to the right of it without trespassing upon the sidewalk. And it is well known that in many country roads the travelled portion of the highway is not the centre of the highway; that the travelled portion follows first one side of the centre line and then the other side, so that it would be impossible for the traveller to follow the true centre line, even if he was able to locate it. On the other hand where the travelled part of the highway is usually only a small portion of the road allowance constituting the highway, a traveller has no difficulty, or comparatively little difficulty, in ascertaining, approximately, where the "centre of the road" is, and turning out accordingly.

In Massachusetts it was held that the "centre of the road" means the centre of the travelled part of the road: *Clark* v. *Commonwealth,* 4 Pick. 125.

A New York statute provides that persons meeting each other on any public highway travelling with carriages, sleighs or wagons, the persons so meeting shall seasonably turn to the right of the centre of the road. It was held that this means the centre of the worked or travelled part of the road, irrespective of the smooth or travelled track, although the whole of the smooth or travelled path may be on one side of that centre: *Earing* v. *Lansing,* 7 Wend. 185.

The Missouri Statute uses the term "central line of the roadway," and it was held that means the line that bisects the middle line of the usable road, and is not necessarily the middle line of a paved or dedicated street, and where, on account of obstructions, a part thereof is made impassable, the statute refers to the remaining passable way: *Harmon* v. *Fowler Packing Co.,* 129 Mo. App. 715.

And where the centre line of the road is obscured by snow, the centre line of the road must be construed to mean the centre of the beaten travelled track, without reference to the worked part of the road: *Smith* v. *Dygert,* 12 Barb. (N.Y.) 613; *Jaqueth* v. *Richardson,* 8 Metc. 213.

The fact that the road is rough or rutty is no excuse for not turning out from the centre: *Earing* v. *Lansing, ante.*

Under a statute similar to the New York Statute, it was held that the travellers shall turn to the right in such season (fit or due time) that neither shall be retarded in his progress by reason of the other occupying his half of the way, when he may have occasion to use it in passing: *Brooks* v. *Hart,* 14 N. H. 310; *Neal* v. *Randall,* 98 Me. 69. The same phrase, "seasonably turn to the right," is found in the Saskatchewan Vehicles Act, and in Art. 1415 of the R. S. Quebec.

In a recent Alberta case reference was made to the wording of the New York Statute, and it was said that this means "he shall turn to the right in a seasonable time." Now these words are not used in our statute, but I think that is what the statute means. It must mean that a person must in a reasonable and seasonable time before actual meeting, turn to the right": *Thomas* v *Ward* (1914), 11 D. L. R. 231.

Under an enactment requiring drivers to "seasonably turn to the right," it has been held that it is not necessary for a person to turn to the right so that all of his vehicle is on the right of the centre of the highway, but it is sufficient if he turns out far enough so that the approaching vehicle may pass safely without turning at all: *Buxton* v. *Ainsworth,* 138 Mich. 532.

There is no rule of law requiring the driver of an automobile or other vehicle to keep to the right side of the road when not meeting other vehicles; nevertheless he is negligent in being on the left side of the road without any excuse therefor, when he knows he is likely to collide with other vehicles: *Thomas* v. *Ward, supra.* One person may generally occupy any portion of the highway so long as that particular portion is not being used or sought to be used by another; but a person not having his vehicle in position so that he can properly pass other travellers is bound to use more care and caution against collision with another vehicle he may meet, than if he was using the right hand side of the highway: *Parker* v. *Adams,* 12 Metc. (Mass.) 403; *New York Transp. Co.* v. *Garside,* 157 Fed. 521; *Aston* v. *Heaven,* 2 Esp. 533. And

it has been held that if the street is very broad he is not bound to observe the proper side of the road. In *Wordsworth* v. *Willan,* 5 Esp. 273, which was an action on the case against the proprietors of a stage-coach, for the negligence of their servant in driving so near the path, on the wrong side of the road, that the plaintiff's horse, becoming frightened and plunging, came in contact with the coach and broke his leg, it was said by Rook, J., that it could not be laid down as a certain rule, nor did public convenience require, that the driver is under all circumstances bound to keep on what is considered the proper side of the road; and that if there was no interruption of any other carriage, or the road was better, public convenience did not require that the driver should adhere to that law of the road. He took the rule to be that if a carriage coming in any direction left sufficient room for any other carriage, horse, or passenger, on its proper side of the way, it was sufficient; but that it was evidence for the jury if the accident arose from want of that sufficient room; the driver was not to make experiments.

It must be borne in mind that in England the "law of the road" is established by custom. In this country, where it is enacted by statute, the rule is probably a little more stringent. Thus, it has been laid down that if a party travels upon the prohibited side of the road, and from the size or character of his team or vehicle, or the state of the road, should be unable to surrender to such as he might meet the portion of the way to which they were entitled, the fact that he could not yield the road might not, and probably would not, furnish a legal excuse, exonerating him from liability for an injury sustained by one passing who was in no wise in fault. The wrong would consist in placing himself where he might be the occasion of the injury which has resulted; that is, on the prohibited side of the road. It would be legal fault in him to be found there occupying that part of the road belonging for the time to another, as against him. His inability to leave the part of the way voluntarily occupied would not form a valid excuse exonerating him from liability for the injury sustained by another by reason of such occupancy. But the traveller whose part of the road is trenched upon cannot for that reason carelessly or imprudently rush upon the party or his team or vehicle, and, if he sustains injury, recover damages therefor. He may probably attempt to pass, if such attempt would be reasonably safe and prudent. If otherwise, he must

delay and seek redress for the detention if damage result therefrom. But if, in a prudent attempt to pass, he sustained injury, there would seem to be no reason to doubt that the law would give redress: *Smith* v. *Conway,* 121 Mass. 216; *Brooks* v. *Hart,* 14 N. H. 307. Angell on Highways, sec. 333.

To entitle a driver to the benefit of the right of way he must be in the right place at the right time under proper conditions: if he is driving at an excessive rate of speed, and that negligence is the real cause of the accident, a claim for the benefits of the right of way cannot help him: or if he fail to give warning of his approach, and that neglect is the cause of the accident, any claim to the benefits of the right of way is out of the question: *Heron* v. *Coleman* (1919), 46 O. L. R., p. 158.

"The presumption that the one on the wrong side of the highway is guilty of negligence, is one which may be rebutted. A deviation from the usual custom is often proper, and is sometimes necessary, for a too rigid adherence to the rule, where an injury might have been averted by the exercise of reasonable care in a variance, may render a traveller liable. Circumstances may be such that owing to the condition of the road or street, the situation of other vehicles or the occurrence of a sudden emergency, that a driver who turns to the wrong side of the road will be regarded as justified in adopting the course thus pursued. Thus, the driver of an automobile has been permitted to turn to the left for the purpose of avoiding a collision. Likewise, if one is obliged by reason of an obstacle in the road to go to the wrong side of the highway, and his vehicle there collides with another without his fault, he is not necessarily liable. So, where the driver of an automobile turned a curve at a high rate of speed, it has been held that there could be no recovery for damages caused by a collision with another automobile, even though the latter was on the wrong side of the highway, it appearing that such driver knew that automobiles were liable to be on such side in order to avoid rough stone and gravel on the other side. And where the plaintiff, acting as a reasonably prudent man, turns to the left, owing to the negligent operation by the defendant of his automobile, he may be held to be excused from obeying the law of the road. A statute requiring vehicles to keep to the right of the centre of the street has no application where a vehicle, through no fault of the driver, skids on a slippery

pavement, and is thrown across the centre line. A deviation from the rule is also frequently necessary in the crowded streets of a large city: Huddy, pp. 457-9, where a number of cases are cited.

A person may pass on the left side of the road, or across the same, for the purpose of turning up to a house, store or other object on that side of the road; but in so doing he must not obstruct another lawfully passing on that side which would be in a direction in a degree contrary to his; if he does, he acts at his peril, and must answer for the consequences of such violation of his duty. In such circumstances he must pass before, or wait until such person has passed on: *Palmer* v. *Barker,* 11 Me. 338.

In *Apperson* v. *Lazro,* 44 Ind. A. 186, the defendant while operating his automobile approached an old man walking in the road, whom he saw in sufficient time to avoid, but continued to run towards him until he was so close that in swerving to avoid a collision he struck the man. The question was raised as to whether the driver of the automobile was on the "right" or "wrong" side of the road. The Court held that it was immaterial on which side of the road the defendant was driving his automobile. The defendant "had a perfect right to use any part of it, but running his automobile at a high rate of speed, directly towards a person so close to him that he is compelled or excited to flee from his path to keep from being run over is an unreasonable abridgment of that person's right to use the highway."

The party driving a light team is bound to give way or get out of the way of the party driving a heavily loaded team: *Wrinn* v. *Jones,* 111 Mass. 360; *Commonwealth* v. *Temple,* 80 Mass. 69.

Where by municipal by-law or police regulation it is provided that vehicles shall use only the right hand roadway, it may be negligence to use the left hand roadway: *Wheeler* v. *Hall,* 157 Mo. App. 38.

In cases where parties meet *on the sudden,* and an injury results, the party on the wrong side of the road should be held answerable unless it clearly appears that the party on the proper side had ample means and opportunity to prevent it. In *Chaplin* v. *Hawes,* 3 C. & P. 554, Best, C.J., said: 'A man may not on a sudden be sufficiently self-possessed to know in what way to decide; and in such case the wrongdoer is the party who is to be answerable for the mischief, though

it might have been prevented by the other party's acting differently."

In the United States it has been decided that there is no law of the road requiring a man on horse back when meeting a horse or vehicle to turn out to the right or left side. The rider must govern himself according to his notions of prudence at the time under the circumstances: *Dudley* v. *Bolles,* 24 Wend. 465. But it is said that it is ordinarily a rule, sanctioned by common consent and immemorial usage, that a person on horse back should yield the travelled path to one who is travelling in a vehicle: *Washburn* v. *Tracey,* 2 D. Chip. (Vermont) 128. And in Pennsylvania it was held that an equestrian has a right of way as well as the driver of a vehicle, yet the enjoyment of that right is to be regulated by reason, and is not such that he can compel one with a heavy load to leave the beaten track, if there is sufficient room to pass on either side. And this rule was said to apply to a buggy laden with three men and drawn by a single horse: *Beach* v. *Parmenter,* 11 Harris 196.

It will be noticed that sub-section (1) does not, in terms, apply to a person on horse back; while sub-section (3), which includes such travellers, applies only to meetings at a cross-road or intersection. And section 4, dealing with vehicles overtaken by others, makes special reference to persons travelling on horse back.

The rule as to the proper side of the road does not apply with respect to foot-passengers; but, as regards them, the carriages may go on which ever side of the road they may please: *Cotterill* v. *Starkey,* 8 C. & P. 691; *Lloyd* v. *Ogleby,* 5 C. B. N. S. 667; 21 Hals. 416.

Mail coaches are subject to the rules of the road the same as other vehicles: *United States* v. *Hart,* 1 Peters 590.

A driver has a right to stop temporarily by the roadside for his personal convenience, or to load or unload his vehicle; but this right must be strictly subordinated to the primary use of highways as thoroughfares for travel. Thus, in *Rex* v. *Russell,* 6 East 427, it appeared that one or two, and sometimes three, large wagons of the defendant were for several hours, both day and night, standing in a street 37 feet wide before his warehouse, and usually occupied one half of the street, so that no vehicle could pass on that side next the warehouse, though there was ample room to pass on the other side. This was held to be an unreasonable interference with the

free passage of the public, and to be indictable as a nuisance. So it is unlawful for stage-coaches or omnibuses to congregate by the sides of the streets of a populous city, and remain there an unreasonable time soliciting passengers: *Rex* v. *Cross,* 3 Camp. 226. It is a question for the jury, taking all the facts into consideration, whether ordinary care was used in stopping by the wayside: *Greenwood* v. *Callahan,* 111 Mass. 298.

In England the rule of law is well settled that where a highway becomes obstructed and impassable from temporary causes, a traveller has a right to go *extra viam* upon adjoining land without being guilty of trespass: *Henn's Case,* W. Jones, 296. In the United States the same principle has often been incidentally recognized and treated as well settled law: *Holmes* v. *Seeley,* 19 Wend. 507; 3 Kent, Comm. 424. If a traveller by unexpected and unforeseen occurrences, such as a sudden flood, heavy drifts of snow, or the falling of a tree, is shut out from the travelled paths, so that he cannot reach his destination without passing upon adjacent lands, he is under a necessity to do so; that is to say the act to be done can only be accomplished in that way. Such a temporary and unavoidable use of private property must be regarded as one of those incidental burdens to which all property in a civilized community is subject. Angell on Highways, section 353. Having its origin in necessity, this right must be limited by that necessity, and is not to be exercised from convenience merely, nor when by the exercise of due care, after notice of obstructions, other ways may be selected and the obstructions avoided: *Campbell* v. *Race,* 7 Cush. 408.

The meaning of "intersection" has been fully discussed in the notes to section 11 of the Motor Vehicles Act. Where two streets cross each other the "intersection" must mean the lines bounding the square. What is the meaning to be attached to the words in sub-sec. 3 "where a person . . . *meets* another person. . . at a crossroad or intersection?" A statute provided that whenever any persons shall *meet* each other on any road, each shall turn to the right of the travelled part of the road. This was construed to mean only persons approaching each other on the same road, and not persons coming together from different directions at the intersection of two streets: *Lovejoy* v. *Dolan,* 64 Mass. 495.

It is apparent that, here, the Legislature intended to give a more extended meaning to the word "meets," otherwise the section is of no use. When, then, can two travellers approach-

ing an intersection at right angles to each other, be said to meet at the intersection? Take this case: The driver on the left hand side of the other reaches the line of the intersection with his car, while the driver "to the right hand of the other vehicle" is still 20 or 30 feet from the line of the intersection. Has the latter the right of way? Can it be said that they "meet" at a cross road or intersection? To so hold is to construe the statute as laying down a rule governing vehicles *approaching* an intersection. If that was the intention of the Legislature it is badly expressed.

The rule of the road requiring drivers to keep to the right hand side of the road applies to corners: *Johnson* v. *Heckman,* 88 Wash. 595. And where the driver violates this rule and turns sharply to the left hand side, in other language, "cuts the corner," he is guilty of negligence: *Irwin* v. *Judge,* 81 Conn. 492; *Holden* v. *Hadley,* 180 Mich. 636.

Two persons were driving their automobiles at night in opposite directions, but on the wrong side of the road, when they collided and both sustained damage. The evidence disclosed that just before the collision each party endeavored to get to his right side of the road, but that the defendant, fearing the plaintiff would strike him broadside, again turned to the left, the collision following. The plaintiff sued and the defendant counterclaimed. Held, that the accident was caused by the fault of both parties, and that neither party could recover against the other. Both remained on the wrong side of the road until they got too close to each other: *Gunderson* v. *Duncan* (1919), 12 Sask. L. R. 81.

The plaintiff, on a motor-cycle, was travelling on the wrong side of the road, and, when about 150 feet from the defendant's automobile, attempted to escape from his dangerous position, when he lost control of his machine and came into contact with the automobile. The Appellate Division set aside the verdict of a jury in favor of the plaintiff on the ground that there was no reasonable evidence of negligence, either primary or ultimate, on the part of the plaintiff: *Coffey* v. *Dies* (1916), 10 O. W. N. 255.

VEHICLES OVERTAKEN ON HIGHWAY.

4.—(1) Where a person travelling or being upon a highway in charge of a vehicle, or on horseback, is overtaken by a vehicle or horseman travelling at

greater speed, the person so overtaken shall quietly turn out to the right and allow such vehicle or horseman to pass.

(2) Any person so overtaking another vehicle or horseman shall turn out to the left so far as may be necessary to avoid a collision with the vehicle or horseman so overtaken, and the person so overtaken shall not be required to leave more than one-half of the road free.

(3) Where a person travelling or being upon a highway on a bicycle or a tricycle is overtaken by a vehicle or horseman travelling at a greater speed, the person so overtaken shall quietly turn out to the right and allow such vehicle or horseman to pass and the person so overtaking bicycle or tricycle shall turn out to the left so far as may be necessary to avoid a collision.

(4) Where a person travelling upon a highway on a bicycle or tricycle overtakes any vehicle or horseman travelling at less speed, or a person travelling on foot, the person on the bicycle or tricycle shall give to the other person audible warning of his approach before attempting to pass. 2 Geo. V., c. 47, s. 4.

While section 3 deals with the duties of persons meeting and passing on the highway, this section fixes the duties of drivers of vehicles travelling in the same direction Sub-section 1 deals with the obligations of the party ahead and overtaken by the other; sub-section 2 deals with the obligations of the overtaking party—the one who desires to pass the party ahead. Compare section 16 of the Motor Vehicles Act as to the duty of the driver of a motor vehicle in passing overtaken travellers. Whenever the "vehicle" is a motor vehicle this Act must be read in connection with the Motor Vehicles Act.

Persons travelling along a street or highway in the same direction, should exercise ordinary care to avoid injury to each other. The fact that the driver of the rear vehicle did not give any warning of his approach, and attempts to pass without warning, may be considered a failure of the duty to

exercise reasonable care: *Moore* v. *Hart,* 171 Ky. 725. Where the rear vehicle is a motor vehicle the statute requires that he "shall signal his desire to pass and give the driver or rider an opportunity to turn out so that he may be passed with safety." See section 16 Motor Vehicles Act.

Negligence may generally be inferred where the driver of a motor vehicle collides with the rear of a carriage which could have been seen a considerable distance away. In *Shaver* v. *Smith* (Ky.), 200 S. W. 8, it was said: "The automobile was approaching the wagon from the rear. It does not appear that the wagon suddenly pulled in front of the automobile. The driver had the machine under perfect control. It was broad daylight, and the position of the wagon was known to the driver of the machine. Under these circumstances the machine collided with the wagon, and the only excuse that the driver of the machine offered is that the wagon was in the way, and he miscalculated the distance between his machine and the wagon Even if the wagon was on the wrong side of the road and in the way, this did not give to the driver of the machine the right to run against the wagon. Under the circumstances he should have stopped his car and requested the driver of the wagon to turn out, rather than keep on driving and come in collision with him. . . . On the other hand if he ran into the wagon merely because he miscalculated the distance, there can be no question that the collision was due to his fault."

In the case of two cars travelling in the same direction the front one has the superior right and may maintain its position in the centre of the highway if there is sufficient space on its left to enable the approaching car safely and conveniently to pass. If the position of the forward car in the centre of the highway does not leave such room for passage, then it must, upon request or equivalent notice, if practicable and safe, so turn aside to leave such room for passage. If at the moment there is not sufficient room in which it can do this, it is the duty of the rear car to wait until a place is reached where this can be done: *Mark* v. *Fritsch,* 195 N. Y. 282.

The driver of the rear car has no right to assume that the forward conveyance will turn out to permit him to pass: *O'Connell* v. *Johnson,* 36 R. I. 308. He cannot drive his car ahead and take the chance that the forward vehicle will move to one side in time to permit him to make a safe passage: *Hope* v. *Patterson,* 165 Wis. 200; Huddy, 463.

After turning to the left and moving past the forward vehicle, the driver of the faster conveyance should not turn back towards the right until he has proceeded far enough so that the turn can be made with safety: *House* v. *Fry,* 30 Cal. App. 157.

Article 1415 of the R. S. Quebec, 1909, after providing for the case of a motor vehicle meeting a horse, says: "Any such person operating a motor vehicle shall, on overtaking any such horse, draught animal or vehicle, pass to the left side thereof, and the rider or driver of such horse, draught animal or vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left." The plaintiff was travelling along the macadamized part of the highway on the right, followed by the defendant's motor car, also on the macadamized part. The left part of the road had not been macadamized and simply constituted an ordinary country road where there was ample room to pass alongside plaintiff's vehicle. The defendant, wishing to pass, turned his car to the earth road, but either on account of a rut or lack of experience, his car went too near the ditch and he turned sharply to the right, and doing so struck plaintiff's vehicle. Archer, J., delivering the judgment of the Court of Review, said: "Assuming the plaintiff did not leave sufficient room to his left to allow the defendant to pass, did this justify the defendant in attempting to pass? In my opinion there is no doubt that such an attempt would be made at the risk and peril of the defendant. If plaintiff refused to give him the right-of-way, defendant should have controlled himself and waited and possibly taken, if necessary, proceedings in virtue of Art. 1405, R. S. Q. 1909": *Ménard* v. *Lussier* (1916), 32 D. L. R. 539. And see *Devlin* v. *Bain,* under section 5.

Where there was evidence that the defendant's automobile was within a few feet of plaintiff's horse when passing, and turned in front of him but a short distance ahead, and that a well-broken horse is likely to be frightened under such circumstances unless some warning is given, it was held that it was for the jury to say whether the defendant exercised reasonable caution: *Winston* v. *New England Co.,* 225 Mass. 576.

Because of the fact that a person driving a vehicle overtaking and passing another vehicle, when he passes the centre of the highway, is, perhaps, violating the provisions of section

3 as regards persons approaching from the opposite direction, he should attempt the passage only when he can do so with safety to other travellers. And although this section gives him the right of way under certain circumstances, he must exercise reasonable care in making the passage in order that injury will not result to other travellers: *Bishard* v. *Engelbeck* (Iowa) 164 N. W. 203; *Pool* v. *Brown,* 89 N. J. Law, 314.

In *Ribas* v. *Revere Rubber Co.,* 37 R. I. 198, it was said: "As we have before substantially said, a person attempting to pass a vehicle ahead of him and going in the same direction must exercise proper care in so doing. If a vehicle is approaching in the opposite direction at a moment when he desires to pass the vehicle in front, and the highway is not wide enough safely to accommodate all three teams abreast, then it would be the duty of the person in charge of the rear vehicle, in the exercise of proper care under the circumstances, to wait until the vehicle coming in the opposite direction had passed before he attempted to turn out. It is not necessary to involve the question as to the duty of the vehicle in the rear, in passing, towards another vehicle that may be approaching in an opposite direction. The approach of the vehicle in the opposite direction is simply one of the circumstances which must be considered by the rear man when he attempts to pass. It is simply one of the things which demands the exercise of care upon his part under all circumstances, and in some circumstances he would be required to refrain from attempting to pass until the approaching vehicle had gone by." And see *Nafziger* v. *Mahan,* 191 S. W. 1080.

The English Highway Act, 1835, provides that "If any person shall in any manner wilfully prevent any other person from passing him . . . upon such highway, or by negligence or misbehavior prevent, hinder or interrupt the free passage of any person . . . or shall not keep his wagon or horses on the left or near side of the road for the purpose of allowing such passage," etc., he shall be liable to a penalty. N. was driving a loaded truck on the highway, so much beyond the centre as not to leave room for a motor car which approached from behind to pass on the proper side. He signalled to the driver of the motor car to pass on the other side and he did so without delay or inconvenience. N. was convicted under the Act, and the Court set aside the conviction. Alverstone, C.J., said: "In my

opinion this appeal must be allowed, but I do not wish to give any encouragement to the idea that the driver of a vehicle is entitled to keep in the middle of the road and compel drivers of other vehicles to pass him on the wrong side against their will. . . . The gist of the offence is not allowing a free passage, and that predicates or assumes that there is some other vehicle which is desirous of passing and which is prevented from doing so by the fact that the vehicle in front is not keeping to its near side. . . . It has been laid down over and over again that in the absence of other traffic the driver of a vehicle is entitled to go on any part of the road that he wishes to, and this particular provision in p. 78 of the Highway Act was not intended, in my opinion, to restrict that right": *Nuttall* v. *Pickering* (1913), 2 K. B. 14.

It is *prima facie* evidence of negligence to pass a vehicle going in the same direction on the right of the vehicle to be passed: *Smith* v. *Gardner,* 77 Mass. 418. Whether a traveller is negligent in passing on the wrong side of the road, is not whether it is reasonably impracticable to pass on the proper side, but whether it is reasonably safe and prudent to pass on the other side: *Smith* v. *Conway,* 121 Mass. 216. If the driver of a motor vehicle passes another vehicle going in the same direction on the right side this is not conclusive evidence of negligence, but the test is that of due care under the circumstances. The effect of the statute is to lay the burden of justification on the man who was on the wrong side of the highway: *Herdman* v. *Zwart* (Iowa), 149 N. W. 631. If the leading vehicle should use the left side of the highway, leaving sufficient space for the rear vehicle to pass, the latter is justified in passing to the right: *Wright* v. *Mitchell,* 252 Pa. 325. If for any reason, such as the obstruction of the highway on the left of the leading vehicle so as to prevent a passing on the left, the rear vehicle may, if there is sufficient space, and it can be done by the exercise of proper care, pass to the right of the vehicle in front. The general rule, therefore, that vehicles travelling in the same direction on the highway should pass each other to the left has its exceptions, and must be applied with reference to the circumstances of the particular case: *Wright* v. *Mitchell, supra.*

There is no presumption that the defendant was negligent simply because he comes up from behind and runs into a horse and wagon. The burden remains still on the plaintiff

to prove negligence: *Grogitzki* v. *Detroit Ambulance Co.,* 186 Mich. 347. But in *Salminen* v. *Ross,* 185 Fed. 997, it was held that evidence "that while driving on the right hand side of the road she was overtaken by an automobile which struck the hind wheel of her wagon," established a clear case of negligence. And see *Shaver* v. *Smith, ante.*

Where the leading vehicle turns to the left without warning, while the approaching vehicle is attempting to pass, the former may be guilty of negligence if injury ensues: *Weaver* v. *Carter,* 28 Cal. App. 241. On the other hand the approaching vehicle may be liable if driven carelessly and thus striking the other, especially when the leading vehicle is forced to turn to the left to avoid some obstruction: *Gurney* v. *Piel,* 105 Me. 501.

The driver of a vehicle may be charged with negligence if he suddenly stops his conveyance so that a vehicle proceeding closely behind is unable to avoid a collision: *Strever* v. *Woodard,* 178 Iowa 30. In case of a collision under such circumstances the negligence of both parties is a question for the jury: *Scott* v. *O'Leary,* 157 Iowa 222. Evidence of a custom to give a warning to stop under such circumstances is properly receivable: *O'Neill* v. *Potts,* 153 N. W. 856.

A horseman or light vehicle is ordinarily bound to avoid a heavier vehicle, and should wait where dangerous: *Kennard* v. *Burton,* 25 Me. 39. On the other hand it is the duty of heavy vehicles to keep well to one side to allow lighter vehicles to pass, and failure to do so will render the former liable for accidents directly attributable thereto: *Standard Oil Co.* v. *Hartman,* 102 Md. 563.

The Saskatchewan statute requires that "the person overtaken shall turn to the right so as to allow a free passage to the left." In *Bogeart* v. *Kenney* (1920), 52 D. L. R. 336, affirming 50 D. L. R. 795, in the Court of Appeal, Lamont, J., said: "The object of imposing this duty on the person overtaken is clear. It is to allow the driver coming behind free passage in which to get by. 'Free passage' here, as applicable to automobiles means, I take it, not merely sufficient space, but sufficient space on a road-bed reasonably suitable for motor traffic viewed in the light of the character of the road on which the parties are travelling. Sufficient space on the left in which to pass with an impassable road-bed would not, in my opinion, be a 'free passage.' Here, however, the evidence shows that to the left of the track on which the plaintiffs were driving

the defendant had both ample space in which to pass and a sufficient good road-bed. He had, therefore, 'free passage,' without any turning to the right on the part of the plaintiffs. Where free passage already exists, the statute, in my opinion, imposes no duty on the person overtaken to turn to the right."

Where an automobile overtakes a vehicle drawn by horses the statute imposes no absolute duty on the driver of the car to stop his machine, even though the horses appear to be frightened. But it may well be, in such a case, that the driver of the automobile would be guilty of negligence if he persisted in passing frightened horses, and injury resulted. It would be a question for the jury whether, under all the circumstances, he exercised proper care and prudence: *Fleming* v. *Oates,* 122 Ark. 28; *Ashick* v. *Hale* (1911), 3 O. W. N. 372.

The driver of a motor truck loaded with furniture, after turning to the left to pass a wagon standing by the right hand curbing of the street, turned to the right at a moderate speed without blowing his horn. Just as he had regained the right hand side of the highway in front of the wagon a boy eight years old ran into the street in front of the motor truck and was killed. It was held that the sudden presence of the boy in front of the truck could not have been foreseen and the driver was not liable: *Lovett* v. *Scott* (1919), 232 Mass. 541.

A person operating a motor vehicle who wishes to overtake and pass a horse must wait the proper time and place: *John Murphy Co.* v. *Archambault* (1914), 21 Re de J. 434; *Rossignal* v. *Langlier,* 21 Re de J. 231.

Where the driver of an automobile overtaking a vehicle, by passing to the right instead of to the left, when there was sufficient room to pass on the left, causes an injury, the fault will be attributable solely to the driver of the automobile, more particularly if he gave no warning that he desired to pass: *Taillon* v. *Cote,* 24 Rev. de Jur. 80.

WHERE DRIVER UNABLE TO TURN OUT.

5.—(1) Where one vehicle is met or overtaken by another, if by reason of the weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if required so to

do, he shall assist the person in charge thereof to pass without damage.

(2) Where a portable or traction engine is met or overtaken on a highway by a vehicle drawn by a horse or other animal, or by a horseman, the driver of the engine shall, if practicable, turn out to the right and give such vehicle or horseman at least one-half of the road, and shall in all cases stop and remain stationary until the vehicle or horseman has safely passed, and shall, if requested by the driver of the vehicle or by the horseman, assist such driver or horseman to pass without damage.

(3) Every person in charge of a portable or a traction engine, and being upon a highway and about to meet or be passed by a vehicle drawn by a horse or other animal, or by a horseman, shall stop when at a distance of not less than one chain from such vehicle or horseman and shall remain stationary until the vehicle or horseman shall have safely passed such engine.

(4) Where any such engine is using a highway or bridge between sunset and sunrise, it shall be the duty of all persons in charge thereof to see that some person shall walk, ride or drive ahead of it, carrying a light so as to give warning to persons in charge of approaching vehicles or animals, such person with such light to be and continue at least one chain in front of the engine; and it shall be the duty of such person also to warn the driver of such engine to stop when an animal or vehicle is drawing near, and also to warn the person in charge of such animal or vehicle of such engine.

(5) Every such engine shall, after sunset and before sunrise, carry a bright red light in a conspicuous place in front, and a green light on the rear of the engine or of any vehicle which may be attached to it.

(6) It shall be the duty of the driver or of the person in charge of any such engine to see that it

makes no noise by whistling or otherwise when any horse or animal is passing or is near or is about to pass the same on any highway. 2 Geo. V., c. 47, s. 5.

See *Nuttall* v. *Pickering* (1913), 2 K. B. 14, under section 4.

The party driving a light team is bound to give way or get out of the way of the party who is driving a heavily loaded team: *Wrenn* v. *Jones,* 111 Mass. 360; *Commonwealth* v. *Temple,* 80 Mass. 69.

The defendant was drawing a load of hay on a sleigh, the defendant was drawing a load of brick on a sleigh, both proceeding in the same direction. The plaintiff's team was so close to the side of the road that, owing to the depth of the snow, he could not turn out. The defendant turned to pass and in doing so shoved the plaintiff's sleigh and horses into the ditch, and the plaintiff's leg was broken. The jury found for the plaintiff, but at the same time found that he did not turn out as required by the statute, because of the weight of his load and the depth of the snow. The Court held that, under these circumstances, he should have stopped; and directed a new trial, pointing out that the jury should be directed to find whether the injury to the plaintiff was found by the improper conduct of the defendant, or was contributed to by the act of the plaintiff in not turning out or stopping his horses: *Devlin* v. *Bain* (1862), 11 C. P. 523.

A person on horseback is bound to give way to a vehicle with a load. This was held to be the rule where the vehicle was a buggy containing three men: *Beach* v. *Parmenter,* 11 *Harris,* 196; *Kennard* v. *Burton,* 25 Me. 39.

Sub-section 2.—It will be noticed that this section, unlike section 3, does not require a portable traction engine to "turn from the centre of the road"; it requires him to "if practicable, turn out to the right and give such vehicle or horseman at least one-half of the road." This would mean one-half of the passable road-bed: *Bogeart* v. *Kenney* (1920), 52 D. L. R. 336. It further requires the driver to "in all cases stop and remain stationary until the vehicle or horseman has safely passed"; See the notes to section 16 of the Motor Vehicles Act.

Sub-section 3.—"One chain," *i.e.,* 66 feet.

Sub-section 4.—"Sunset and sunrise"; See the notes to section 6 of the Motor Vehicles Act.

Sub-section 6.—See the notes to section 16 of the Motor Vehicles Act.

DRUNKENNESS OF DRIVER.

6. Where a person in charge of a vehicle or of a horse or other animal used as a means of conveyance, travelling or being on a highway, is, through drunkenness, unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. 2 Geo. V., c. 47, s. 6.

It is, of course, clear that one whose physical condition forbids the operation of a motor vehicle with the precautions which a reasonably prudent man would take, should not attempt such an undertaking, and if one becomes intoxicated, and so negligently operates an automobile as to cause injury to another, his intoxication will furnish no excuse for his negligence or its proximate results. "Voluntary drunkenness furnishes no excuse for negligence; nor does it relieve a drunken man from exercising the degree of care required of a sober man in the same circumstances. If a person is required to use ordinary care, this means that care which every prudent man would exercise under similar circumstances. In taking the conduct of every prudent man as a standard, reference is made to the normal man; that is, the sober man. Ordinary care is not to be measured by what every prudent drunken man would do under like circumstances, but every prudent sober man would do under like circumstances. If ordinary care under certain circumstances would require that a certain thing should be done, the requirement is binding on a man whether sober or drunk; and getting drunk will not relieve the person from the duty. To hold otherwise would be to put a premium upon drunkenness": *Powell* v. *Berry,* 145 Ga. 696.

Although a drunken driver travelling or being on the highway may be liable to the penalty imposed by section 11, the violation of the statute with reference to intoxicated drivers does not afford a basis of recovery in a civil action, unless the injury in question is the proximate result of the intoxication: *Allen* v. *Pearson,* 89 Conn. 401.

It is not necessary that a man be violent or quarrelsome to be intoxicated: *St. Louis Ry.* v. *Waters,* 152 S. W. 137. If his passions are visibly excited or his judgment impaired, a man may be said to be intoxicated: *State* v. *Pierce,* 65 Iowa 85; or whenever he is so much under the influence of intoxicating liquors that his acts, or conduct or movements are affected, so as to be noticeable by others: *Sapp* v. *State,* 116 Ga. 182. Intoxication from the voluntary use of drugs taken to gratify the appetite, is considered in law the same as intoxication from the voluntary use of liquor: *Commonwealth* v. *Detweller,* 229 Pa. 304.

RACING ON HIGHWAY.

7. No person shall race with or drive furiously any horse or other animal, or shout, or use any blasphemous or indecent language upon any highway. 2 Geo. V., c. 47, s. 7.

Compare section 12 of the Motor Vehicles Act, and see the notes thereto. Racing on a highway is negligence *per se: Harnahan* v. *Cochrane,* 12 N. Y. App. Div. 91.

Parties participating in racing on a highway are liable in damages for injuries sustained by third persons lawfully upon the highway: *Johnson* v. *New York,* 186 N. Y. 139. That was an action against a municipality for injuries to the plaintiff from being hit by an automobile during a speed contest which the City of New York had, by an invalid ordinance, authorized. The Court said: "Highways are constructed for public travel, and, as already said, the acts of the defendants were doubtless an illegal interference with the rights of the traveller. It may well be that for an injury to the traveller, or to the occupants of the lands adjacent to the highway, or even to a person who visited the scene of the race for the purpose of getting evidence against the defendants and prosecuting them for their unlawful acts, the defendants would have been absolutely liable regardless of the skill or care exercised. But the plaintiff was in no such situation. She was not even a casual spectator whose attention was called to the race while she was travelling in the vicinity. She went from her home, a distance of five miles from the scene of the race, expressly to witness it and enjoy the pleasure that the contest offered. As to the elements which made the contest illegal she was

aware of their existence. She knew it was to take place on the highway, and she knew it was to be a contest for speed, and that, therefore, the automobiles would be driven at the greatest speed of which they were capable." From these circumstances the Court held the plaintiff could not recover.

There is no just distinction between the "trotting" and "racing" of horses: *Ellis* v. *Beale,* 18 Me. 337.

ATTACHING BICYCLE TO VEHICLES.

7*a*. No person while riding on a bicycle shall attach the bicycle to or take hold of any other vehicle for the purpose of being drawn along a highway. 8 Geo. V., c. 36, s. 1.

More honored in the breach than the observance.

SLEIGH BELLS.

8. Every person travelling upon a highway with a sleigh, sled, or cariole, drawn by a horse or other animal, shall have at least two bells attached to the harness. 2 Geo. V. c. 47, s. 8.

9. Repealed. 7 Geo. V., c. 48, s. 4.

PASSING OVERTAKEN STREET CAR.

9*a*. Where a person travelling or being upon a highway in charge of a vehicle, other than a motor vehicle, or on a bicycle or tricycle, or on horseback or leading a horse, meets or overtakes a street car or a car of an electric railway, operated in or near the centre of the travelled portion of the highway which is stationary for the purpose of taking on or discharging passengers, he shall not pass the car or approach nearer than six feet measured back or forward from the rear or front end, as the case may be, of the car on the side on which passengers are getting on or off until such passengers have got on or got safely to the side of the street, as the case may be. 6 Geo. V., c. 46, s. 1.

Section 15 of the Motor Vehicles Act contains a similar provision, where a motor vehicle meets or overtakes a street car, and decisions bearing on this section will be found discussed under that section.

PASSING STREET CAR ON LEFT.

9*b*. No person in charge of a vehicle other than a motor vehicle or on horseback overtaking a street car or the car of an electric railway, operated in or near the centre of the travelled portion of the highway, which is stationary or in motion, shall pass on the left hand side of such car, having reference to the direction in which such car is travelling. 8 Geo. V., c. 36, s. 2.

Compare section 15*a* of the Motor Vehicles Act, where the authorities are collected.

BRIDGES.

10.—(1) The person who has the superintendence of any bridge exceeding thirty feet in length may cause to be put up at each end thereof, conspicuously placed, a notice legibly printed, in the following form:

"Any person or persons riding or driving on or over this bridge at a faster rate than a walk will, on conviction thereof, be subject to a fine, as provided."

(2) A person who injures or interferes with such notice shall incur a penalty of not less than $1 or more than $8.

(3) If, while such notice continues up, a person rides or drives a horse or other animal on or over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. 2 Geo. V., c. 47, s. 10.

The due exhibition of this copy of the notice at each end of the bridge is a condition precedent to the liability of the offender to the penalty prescribed. And the copy exhibited

must not omit any material part of the form prescribed. Section 1 of an Act provided that no innkeeper should be liable for any loss or injury to property brought to his inn to a greater amount than £30, except in the following cases: "Where such property shall have been stolen, lost or injured, through the wilful act, default or neglect of such innkeeper, or any servant in his employ." To claim the protection of this section the innkeeper was bound to exhibit a copy of section 1 in certain parts of the inn. The innkeeper did exhibit a printed notice which was a true copy of section 1, except that the word "Act" was omitted. It was held that, because of this omission, the notice was of no effect. Cockburn, C.J., said: "I quite concur in thinking that if this were a mere clerical error, we might hold the notice sufficient to meet the requirement of the Act, as still being a copy; but when we find an omission of that which is material, with a view to a clear and distinct statement of the rights and liabilities of the parties respectively, we have an omission which is far beyond a mere clerical error. It is an omission of a substantial part of the notice. When we have an omission of a material and really substantial part of the notice required by the statute, I cannot think it a copy sufficient to satisfy the requirements of the Act": *Spice* v. *Bacon* (1877), 2 Exch. Div. 463.

The following variances between the original document and the copy alleged to be a "true copy," were held to be immaterial: "person" instead of "persons"; "places" instead of "place"; "John A. McDonell" instead of "John A. McDonald"; "cause" instead of "caused"; *Re Lorne Election,* 4 Man. R. 275.

A local or municipal regulation making it an offence to use a heavy motor car on a bridge forming part of a highway of any greater weight than specified in the prescribed notice, except with the consent of the person liable to the repair of the bridge, was held to be *intra vires;* and where such notice has been affixed to the bridge by a person liable for its repair, any one who drives over the bridge a heavy motor car of a weight exceeding that mentioned in the notice is guilty of the offence: *Lloyd* v. *Ross* (1913), 2 K. B. 332.

The essential purpose of a bridge is to carry a road at a desired height over a river, and its channels, a chasm or the like; that of a culvert to make a passage for a small stream crossing under the embankment of a railway or highway, or beneath a road where the configuration of the surface does not

require a bridge. A circular concrete pipe with an inside diameter of three feet had been constructed to replace a former bridge about 8 or 10 feet in span, and it was held to be a culvert and not a bridge: *County of Dufferin* v. *County of Wellington,* 10 O. W. R. 239.

MUNICIPAL BY-LAWS.

10*a*. Any by-laws passed by any municipal corporation or board of police commissioners or police trustees for regulating traffic on the highways which are inconsistent with the provisions of this Act, shall be deemed to be repealed. 7 Geo. V., c. 48, s. 3.

See the notes to section 20 of the Motor Vehicles Act. The By-law of the City of Toronto regulating traffic in the city streets will be found in the Appendix.

PENALTIES: RECOVERY AND APPLICATION OF.

11. When not otherwise specially provided, any person contravening this Act shall incur a penalty of not less than $1 nor more than $20. 2 Geo. V., c. 47, s. 11.

12. No penalty or imprisonment shall be a bar to the recovery of damages by the injured person. 2 Geo. V., c. 47, s. 12.

13. Every fine when collected shall be paid to the treasurer of the local municipality or place in which the offence was committed, and shall be applied to the general purposes thereof, unless the offence was committed on a road or bridge, owned by a company, or person, and such company, or person, or the officer or servant of such company, or person, is the complainant, in which case the penalty when collected shall be paid over to such company, or person. 2 Geo. V., c. 47, s. 13.

14. The penalties imposed by or under the authority of this Act shall be recoverable under the *Ontario Summary Convictions Act.* 2 Geo. V., c. 47, s. 14.

AN ACT TO REGULATE THE LOAD OF VEHICLES OPERATED ON HIGHWAYS.

(6 Geo. V., c. 49, amended by 9 Geo. V., c. 59, and the amendments of 10 Geo. V.).

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Load of Vehicles Act.*

2.—(*a*) In this Act "Highway" shall include bridge.

(*b*) "Vehicle" shall include traction engine, trailer and motor vehicle.

3.—(1) No vehicle shall be operated and no object shall be moved upon wheels, rollers or otherwise over or upon any highway in any municipality in excess of a total weight of twelve tons, or of four and one-half tons on any one wheel, including the vehicle, object and load, without first obtaining a permit as provided by section 4.

(2) No vehicle shall be operated or object moved over or upon such highway which has any flange, rib, clamp or other device attached to its wheels or made a part thereof which will injure the highway, and no vehicle, object or contrivance for moving heavy loads shall be operated or moved upon or over any such highway the weight of which resting upon the surface of said highway exceeds six hundred and fifty pounds upon any inch in width of the tire, roller, wheel or other object, without first obtaining such permit.

(3) The owner, driver, operator or mover of any such vehicle, object or contrivance who has obtained the permit mentioned in section 4 shall nevertheless be responsible for all damages which

may be caused to the highway by reason of the driving, operating or moving of any such vehicle, object or contrivance.

4.—(1) The municipal corporation or other authority having jurisdiction over the highway may, upon application in writing, grant a permit for the moving of heavy vehicles, loads, objects or structures in excess of a total weight of twelve tons over said highway or for operating or moving over any such highway any vehicle, object or contrivance the weight of which resting upon the surface of said highway exceeds six hundred and fifty pounds upon any inch in width of tire, roller, wheel or other object.

(2) Such permit may be general or may limit the time and the particular highway which may be used, and may contain any special conditions or provisions which may be deemed necessary for the protection of said highway from injury.

(3) The council of any municipality may by by-law provide that such permit may be issued by any officer of the corporation named therein.

4*a*. All self-propelled vehicles other than traction engines shall be equipped with rubber tires or tires of some composition equally resilient. 9 Geo. V., c. 59, s. 1.

5.—(1) No vehicle carrying a weight in excess of four tons, including the vehicle, shall be operated upon any such highway at a speed greater than ten miles an hour; and no such vehicle carrying a weight in excess of six tons, including the vehicle, shall be operated upon any such highway at a speed greater than eight miles an hour, but this sub-section shall not apply to traction engines. 9 Geo. V., c. 59, s. 2.

(2) The municipal corporation or other authority having jurisdiction over the highway may make regulations limiting any vehicle passing over a

bridge to a speed not exceeding five miles an hour, and notice of the limit of speed fixed by such regulation shall be posted up in a conspicuous place at each end of the bridge.

6. No vehicle shall have a greater width than 90 inches except traction engines, which may have a total width of 110 inches.

7. The municipal corporation or other authority having jurisdiction over the highway may make regulations for the purpose of carrying out the provisions of this Act.

8. Any person who contravenes any of the provisions of this Act or any regulations made or permits granted under the authority thereof shall incur a penalty of not more than $100, recoverable under the *Ontario Summary Convictions Act,* which shall be paid to the municipal corporation or other authority having jurisdiction over the highway, and shall form a fund for the maintenance and repair of the highway.

9. *The Traction Engines Act* is amended by adding the following as section 14:—

14. This Act shall be subject to the provisions of the *Load of Vehicles Act.*

This Act was amended in 1920 as follows:

AN ACT TO AMEND AN ACT TO REGULATE THE LOAD OF VEHICLES OPERATED ON HIGHWAYS.

1. This Act may be cited as the *Load of Vehicles Amendment Act, 1920.*

Section 3 of the *Load of Vehicles Act* is amended by adding thereto the following sub-sections:

WEIGHT OF LOAD DURING MARCH AND APRIL.

(4) During the months of March and April vehicles operated or objects moved over or upon

any highway not within a city or separated town, and having a carrying capacity exceeding one ton, shall not be loaded in excess of one-half the rated carrying capacity of such vehicle or object, without obtaining a permit as provided by section 4.

POWER OF CONSTABLE TO HAVE LOAD WEIGHED.

(5) Any constable or peace officer, or any traffic officer of a municipal corporation commission or of the Department of Public Highways who believes any vehicle to be carrying a weight in excess of the loads permitted by this Act, may require the driver of such vehicle to proceed with the vehicle as loaded to the nearest adequate weighing machine, and obtain therefrom a certificate as to the weight of such vehicle and load; but the driver shall not be so required to proceed if it is necessary for him to travel more than one mile out of his way in order to reach such weighing machine.

PENALTY ON DRIVER.

(6) Any driver who, when so required to proceed to a weighing machine, refuses or fails to do so, shall incur the penalty provided for a contravention of the provisions of this Act.

PRODUCTION OF INVENTORY SHOWING WEIGHT OF TRUCK AND LOAD.

(7) When a weighing machine can not be reached within the prescribed distance, or in lieu of proceeding to such weighing machine, the driver of any motor vehicle shall produce an inventory showing the true weight of the truck and the goods or load thereon, verified in writing by the owner of such vehicle.

(8) In lieu of proceeding to a weighing machine, the weight of the load may be determined by a portable weighing device provided by the constable,

police officer or traffic officer, and it shall be the duty of the driver of the vehicle to facilitate the weighing of the vehicle and load by any such device.

PROHIBITION AS TO CARRYING LOAD IN EXCESS OF PERMIT.

(9) No motor vehicle having a permit issued under *The Motor Vehicles Act,* the fee for which is based upon the weight of the vehicle and load, shall at any time, when upon a public highway, carry a load in excess of that for which the permit was issued, as stated upon such permit, and for which the fee therefor was estimated.

WIDTH OF VEHICLE.

3. Section 6 of *The Load of Vehicles Act* is repealed, and the following substituted therefor:

6. No vehicle, including load or contents, shall have a greater width than 96 inches, except traction engines or threshing machines, which may have a total width of 110 inches, and except loads of loose fodder, which may have a total width of 120 inches.

ISSUE OF PERMIT BY DEPARTMENT OF PUBLIC HIGHWAYS.

4. Section 4 of *The Load of Vehicles Act* is amended by adding thereto the following subsection:

(4) When a vehicle for which a permit is required under this section in order to pass over a highway or highways under the jurisdiction of two or more municipalities or other authorities, the permit so to do may be issued by the Department of Public Highways, which permit shall be in lieu of the several permits to be otherwise obtained from the municipal corporations or other authorities, but the permit shall limit the time and the particular highway or highways which may be used, and may contain any special conditions or provisions which

may be deemed necessary to protect such highways from injury.

In England it was held that a regulation limiting the weight of a registered heavy motor car has reference only to the weight of the motor vehicle, and has no application to the weight of the trailer attached to it: *Pilgrim* v. *Simmonds,* 105 L. T. 241.

Where regulations provide that if a heavy motor car has all its wheels fitted with pneumatic tires, the speed at which it may be driven on the highway shall not exceed 12 miles an hour, when the registered weight of any axle does not exceed 6 tons, and 8 miles an hour where the registered weight of any axle exceeds 6 tons, the speed limit for a car of such class, of which the registered weight of the front axles is 2 tons 2 cwts. and that of the back axle over 6 tons, is 8 and not 10 miles an hour: *Auld* v. *Pearson* (1914), S. C. (J.) 4.

Sec. 5 of the Traction Engines Act (R. S. O. 1914, c. 212), provides as follows: "Before it shall be lawful to run such engine over any highway . . . it shall be the duty of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used." It was held by the Supreme Court of Canada, affirming the judgment of the Court of Appeal of Ontario, that the strengthening of a bridge by laying planks over it is a condition precedent to the right to use the bridge: *Goodison* v. *Township of McNab* (1910), 44 Can. S. C. R. 187.

The principle of the last mentioned case was applied in a case involving the construction of section 6 of this Act. The plaintiff was drawing a motor truck of over 5 tons weight, loaded with 4 tons of merchandise, on a highway, when it broke through a bridge. He sued the township and recovered damages. On appeal the judgment was reversed. Riddell, J., said: "The Load of Vehicles Act provides that 'no vehicle shall have a greater width than 90 inches except traction-engines'—vehicle being interpreted by section 2 (*b*) as including motor vehicles such as this was; it is conclusively proved that this vehicle, not being a traction-engine, was almost 96 inches wide. The plaintiff had no right to have such a vehicle on the highway at all, and in respect thereof he was a mere trespasser. The corporation owed him no duty

except to refrain from setting traps for him and from maliciously or wilfully injuring him, and he must take the road as he finds it.

"That the extra width of the tires had or might have had nothing to do with the causing the accident has, I think, no significance—the motor-truck should not have been there at all": *Sercombe* v. *Township of Vaughan* (1919), 45 O. L. R. 142.

APPENDIX

REGULATIONS.

Respecting the Fees to be paid for Motor Vehicle Permits, etc., pursuant to the provisions of *The Motor Vehicles Act.*

1. The following fees shall be paid to the Department of Public Highways for Motor Vehicle Permits and Transfers:—

For the registration of Motor Vehicles, except as hereinafter specified, of

25 H.P. or less	$10 00
More than 25 H.P. and up to 35..	15 00
" " 35 H.P. and up to 50..	25 00
" " 50 H.P.	30 00

For the registration of Motor Vehicles driven by electricity stored in the cars themselves, with the exception of Commercial Vehicles or Motor Trucks	$10 00
For every Commercial Vehicle used solely as such and every Motor Truck having a combined weight and carrying capacity of two tons or less	10 00
Over two tons and not more than eight tons— Per ton or fraction thereof	5 00
Over eight tons and not more than ten tons— Per ton or fraction thereof	7 50
Over ten tons— Per ton or fraction thereof	10 00
For registration of every Motorcycle	3 00
For permit and one set of markers to manufacturers and dealers in motor vehicles...	20 00
For each additional set of markers	20 00
For permit, including three markers, to manufacturers and dealers in Motorcycles.....	10 00
For each additional set of markers	2 00

For Motor Vehicle markers in case of loss (per pair) $2 00
For Motorcycle marker in case of loss (per pair) 1 00
For transfer of permit on change of ownership 1 00

For registration applied during period beginning with 1st day of September and ending on the 31st day of December in any year, one-half the foregoing fees.

For each "In Transit" marker, twenty-five cents.

Fire engines and fire patrol apparatus, police patrol wagons and municipal-owned ambulances shall be exempt from payment of above fees, but such motor vehicles shall be registered and display the regulation markers. The fee for such registration with markers shall be $1.00.

2. A marker shall be exposed only upon the Motor Vehicle in respect of which it was issued.

3. A permit shall remain in force only during the calendar year in which it was issued.

4. On a change of ownership of a registered Motor Vehicle, the permit and markers thereof shall go with the vehicle, and notice of such change of ownership shall immediately be sent by the person to whom such permit was issued to the Department of Public Highways, together with the full name and address of the purchaser, and the purchaser shall forthwith pay the transfer fee.

5. A permit may be issued to a manufacturer or dealer in motor vehicles upon payment of the fee hereinbefore provided, which said permit shall apply to any motor vehicle which said manufacturer or dealer may from time to time during the term of said permit hold for sale or personal use, but not for hire. The markers issued with the said permit are for use only on vehicles owned by the per-

son or firm to whom this permit is issued. They must not be loaned to sub-agents or to purchasers of vehicles. The Minister of Public Highways may cancel or suspend this permit for any infraction of this regulation. The marker issued with said permit shall bear a letter or other device to distinguish the same from markers issued to other manufacturers or dealers. Satisfactory evidence as to the need of such markers shall be given by the dealer.

6. The Minister of Public Works and Highways may make special determinations of the H.P. of any motor vehicle sought to be registered; but in general and until otherwise determined, the horse power of gasoline automobiles will be fixed according to the formula adopted by the Society of Automobile Engineers (S.A.E.), which is as follows:—

$$\text{Horse Power equals } \frac{\text{bore x bore x number of cylinders}}{2.5}$$

7. A permit will not be issued for a commercial vehicle as Motor Truck having a combined weight and carrying capacity in excess of twelve tons until there is filed in the Department of Public Highways by the owner of the said vehicle, a properly certified copy of a permit as provided by section 4 of *The Load of Vehicles Act,* issued by each municipal corporation or other authority having jurisdiction over the highways upon which the vehicle is to be operated.

8. "In Transit" markers may be issued to a manufacturer or dealer upon payment of the fee heretofore provided, said markers to be used only on motor vehicles in transit from factory to dealer.

REGULATIONS FOR LICENSED DRIVERS.

Pursuant to the provisions of *The Motor Vehicles Act.*

1. Every person applying for a license under section 4 of *The Motor Vehicles Act* shall do so in writing on the prescribed form.

2. A license shall remain in force during the calendar year only in which it is issued.

3. Every licensee shall notify the Department of Public Highways of every change of his employer, giving the name, address and description of his employer from time to time, and the number of the permit of the motor which he operates.

4. Each license as issued shall bear a distinguishing number and the licenses shall be issued consecutively.

5. The Department of Public Highways shall issue to each licensee a metal badge, bearing thereon the word "Ontario," the letters "L.D." (licensed driver), and the number of the license and the year of issue.

6. Every licensee while driving a motor vehicle on a highway shall bear such badge conspicuously displayed upon his person.

7. If any person other than a licensee to whom the same was issued shall bear a badge while driving a motor vehicle, the license issued therewith may be cancelled by the Minister of Public Works and Highways.

8. If a licensee shall at any time drive a motor vehicle without displaying his badge as aforesaid or shall display any badge other than that issued with his license, his license may be revoked by the Minister of Public Works and Highways.

9. Each licensee shall pay a fee of $2.00 for such license.

10. Each licensee shall pay a fee of $1.00 for the annual renewal of such license.

11. Every person applying for a renewal of such license shall do so in writing on the prescribed form.

12. Any person passing the examination prescribed in sub-section (3) of section 4 of *The Motor*

Vehicles Act, but who does not drive for hire, pay or gain, may be granted Departmental Registration and a Non-professional Certificate of Competency, upon payment of a fee of $1.00.

13. Members of the Canadian Overseas Expeditionary Forces who have served overseas and who have received honourable discharge, shall be granted preliminary registration as licensed drivers, without payment of fee as required in section 9 of these Regulations.

14. During the period beginning with the 1st day of September and ending on the 31st day of December, inclusive, in any year, applicants shall pay one-half the fees mentioned in sections 9 and 10 of these Regulations.

No. 8485. A BY-LAW

To Regulate Traffic on the Public Streets.

[Passed August 5th, 1920.]

The Council of the Corporation of the City of Toronto enacts as follows:—

DEFINITION OF TERMS.

1. The word 'street' in this By-law shall mean and include any public highway, road, street, lane, alley, square, or place; the word 'vehicle' shall include any vehicle drawn, propelled or driven by any kind of power including muscular power, but shall not include the cars of electric or steam railways running only upon rails; the word 'horse' shall be deemed to include a mare, a gelding and a mule, and 'to park' as applied to a vehicle shall mean to allow the same to remain standing on a street.

POLICE TO CONTROL ALL TRAFFIC.

2. The absolute control of vehicular and pedestrian traffic in the streets shall be under the manage-

ment of the Board of Commissioners of Police through their police constables and officers, who shall have the duty of enforcing the provisions of this By-law.

PARKING OF VEHICLES.

Vehicle not to Obstruct Traffic.

3. No horse or vehicle shall be left in such a manner as to obstruct the ordinary traffic of the street.

VEHICLES TO BE WITHIN SIX INCHES OF CURB.

4. No vehicle shall be left to stand on any street where there is a curb unless such vehicle is parallel to, and the wheels or runners thereof are not more than six inches from such curb, but this section shall not apply to any vehicle being actually loaded or unloaded.

STREETS NOT TO BE INCUMBERED.

5. Subject to sections 11 and 13 hereof and to By-law No. 4321 as amended, no horse or vehicle shall stand on any street an unreasonable time having regard to the traffic requirements of the street in question.

ENTRANCE TO THEATRES, ETC., TO BE KEPT CLEAR.

6. No vehicle shall be parked in front of the entrance to a theatre, hotel auditorium, office building or any building where large assemblages are being held, or where goods or merchandise is taken in or out.

REGULATION OF PARKING AT STREET CAR INTERSECTIONS, ETC.

7. No vehicle shall be parked within 80 feet immediately approaching a street intersection where two car lines cross, or within the 50 feet immediately past such intersection, or within 50 feet of any place where street cars are accustomed to stop for any purpose.

NO PARKING NEAR FIRE HYDRANTS.

8. No vehicle shall stand within five feet of a fire hydrant, or be parked or stopped in such a position as to prevent convenient movement of another vehicle already stopped.

PARKING ON BRIDGES FORBIDDEN.

9. No vehicle shall be parked on any bridge within the municipality.

LANES AND DRIVEWAYS TO BE UNOBSTRUCTED.

10. No vehicle shall stand on any parking place so as to obstruct the entrance to any lane or driveway into private garages or into any building.

FIFTEEN-MINUTE PARKING LOCATIONS.

11. Except on Sundays and public holidays, no vehicle shall be parked upon the streets in this section named between the hours of 9 a.m. and 4.45 p.m. for a longer period than fifteen minutes and between the hours of 4.45 p.m. to 6 p.m. for a longer period than five minutes. The following are the streets referred to:—

King Street from Church Street to York Street.

Yonge Street from Front Street to Dundas Street.

Queen Street from Bond Street to Simcoe Street.

THIRTY-MINUTE PARKING LOCATION.

12. Except on Sundays and public holidays, no vehicle shall be parked upon the streets in this section named between the hours of 9 a.m. and 4.45 p.m. for a longer period than thirty minutes, and between the hours of 4.45 p.m. to 6 p.m. for a longer period than five minutes. The following are the streets referred to:—

Adelaide Street, from Church to Sheppard Street.

Richmond Street, from Church to York Street.

Bay Street, from Wellington to Queen Street.

Wellington Street, from Church to York Street.

Victoria Street, from Colborne to Queen Street, on west side only.

Church Street, from Richmond to Queen Street.

Jordan Street, on east side only.

Toronto Street.

Lombard Street.

Melinda Street.

Colborne Street, on north side only, Scott to Market Street.

Court Street, on south side only.

TWO-HOUR PARKING LOCATIONS.

13. Except on Sundays and public holidays no vehicle shall be parked upon the streets in this section named, between the hours of 9.00 a.m. and 6 p.m. for a longer period than two hours. The following are the streets referred to:—

Temperance Street, centre of street, from 50 feet west of Yonge Street to 50 feet east of Bay Street.

Gerrard Street, north side, Jarvis Street to Sherbourne Street, except opposite Horticultural Avenue.

Gerrard Street, south side, Church Street to Victoria Street.

Gould Street, north side, Church Street to Victoria Street.

Victoria Street, east side, Gould Street to Gerrard Street.

Bond Street, east side, Dundas Street to Queen Street.

Shuter Street, south side, Church Street to Bond Street.

Mutual Street, west side, Queen Street to Shuter Street.

Adelaide Street, south side, opposite St. James Cathedral.

George Street, west side, Duke Street to Duchess Street.

Front Street, south side, from west side of the Customs House to Bay Street.

Bayside Park, north and south sides.

Sheppard Street, east side, Temperance Street to Adelaide Street.

Richmond Street, south side, York Street to John Street.

Emily Street, west side.

Richmond Street, north side, John Street to Duncan Street, opposite Methodist Book Room.

St. Patrick's Market Square, rear of Queen Street.

Spadina Avenue, both sides, Queen Street north where Police Department designate.

St. Mary's Street, south side, Yonge Street westerly.

Elizabeth Street, west side, Louisa Street to Albert Street.

Trinity Square, opposite Trinity Church.

James Street, west side, Queen Street to Albert Street.

Wellington Street, south side, from York to Simcoe Street.

Richmond Street, centre, from Church to Jarvis Street.

Lombard Street, centre, from opposite No. 27 to 108.

Church Street, east side, from King to Adelaide Street.

Market Street, centre, from King Street to Front Street.

Albert Street, north side, from Yonge Street lane to Chestnut Street.

Chestnut Street, west side, Queen to Armory Street.

Osgoode Street, centre, from University to Chestnut Street.

PARKING PROHIBITED ON CERTAIN STREETS.

14. No vehicle shall be parked on Leader Lane or upon either side of Temperance Street.

TRAFFIC REGULATIONS FOR VEHICLES.

Vehicles to Keep to Right and Not to Cut Corners.

15. Vehicles travelling upon any street shall keep to the right, and in turning to the right into another street shall keep close to the curb, and in turning to the left into another street, shall do so only after passing the centre line of such other street.

VEHICLES TO KEEP NEAR TO CURB.

16. Vehicles other than motor vehicles shall keep as near the curb as circumstances and weather conditions permit.

PASSING OTHER VEHICLES AND STOPPING.

17. And vehicle meeting another shall pass to the right, and overtaking another shall give audible warning and pass to the left, and all vehicles requiring to stop at the curb shall do so with their right-hand side next to the curb, except on highways named in section 43.

IMMODERATE SPEED PROHIBITED.

18. No horse shall be ridden or vehicle driven or otherwise propelled at an immoderate speed on any street, and every person driving or riding along any street shall slacken speed in approaching a standing street car or an intersection with another street.

DRIVER STOPPING, ETC., TO SIGNAL.

19. The driver of every vehicle shall raise his arm when stopping or slowing up, and no vehicle shall be stopped on or obstruct a street intersection.

20. When the driver of any vehicle intends to turn he shall signify his intention by pointing his hand in the direction he intends to turn.

CERTAIN LEFT-HAND TURNS PROHIBITED.

21. Between the hours of 9 a.m. and 6 p.m., except on Sundays and public holidays, no vehicle shall be turned to the left at the following intersections:—

King Street and Yonge Street.
Queen Street and Yonge Street, and
Bloor Street and Yonge Street.

CERTAIN VEHICLES TO HAVE RIGHT OF WAY.

22. The vehicles of the Police and Fire Departments of the City, those carrying the Royal Mail and Ambulances, shall have the right of way over other traffic, and no person shall obstruct or delay the aforesaid vehicles while travelling on the streets.

OWNER'S NAME AND ADDRESS TO BE ON VEHICLES.

23. Vehicles used for delivery purposes shall have the owner's name and address painted or otherwise shown thereon for the purpose of identification.

TRAFFIC SIGNALS TO BE OBEYED.

24. All persons in charge of horses, vehicles or street cars, shall obey promptly all the signals of a constable regulating traffic.

RIDING OR DRIVING ON OR ACROSS SIDEWALKS.

25. No person shall ride or drive a horse or vehicle upon the boulevard or sidewalk of any street, except at a regular crossing provided thereon. Provided however that this prohibition shall not apply to prevent a person crossing the sidewalk for a lawful purpose if he shall previously thereto obtain a permit from the Commissioner of Works and City

Engineer so to do, and has covered such sidewalk with planking at least four inches in thickness, securely fastened and chamfered or bevelled off at the ends, so as to be no obstruction to pedestrians, and has constructed across the drain, gutter or water course opposite the proposed crossing a good and sufficient bridge of planks or other and substantial material, so constructed as not to obstruct the drain, gutter or water course.

SIGNS ON OVERHANGING LOADS.

26. All vehicles carrying loads which overhang the vehicles to the extent of five feet or upwards shall display upon such overhanging load at the rear end, a light, flag or other sign sufficient to warn the public of the projection of such load.

VEHICLES NOT TO BE DRIVEN BY CHILDREN.

27. No horse or power propelled vehicles shall be driven upon any street in the City in charge of a driver less than sixteen years of age.

SAFETY ZONES.

28. Any portion of any highway on which an enclosure is marked by the use of white lines upon the pavement or otherwise is hereby set aside as a "safety zone," as defined by the Municipal Amendment Act, 1920.

29. All persons are hereby prohibited from driving motor or other vehicles over or upon any safety zone while any pedestrian is thereon or is about to enter thereon.

PEDESTRIANS.

Pedestrian Travel Regulated.

30. Pedestrians shall pass to the right and no person shall run or race on the streets or sidewalks, or crowd or jostle other pedestrians so as to create discomfort, disturbance or confusion.

BICYCLES AND TRICYCLES.

Bicyclists to Have Control of Bicycle and not to Ride More than two Abreast.

31. Every rider of a bicycle or tricycle shall at all times when riding the same keep his or her feet on the pedals and hold the handlebars, and no bicyclists or tricyclists shall ride more than two abreast.

Carrying of Children on Bicycles.

32. No person shall carry a child or children upon a bicycle or tricycle, except that one child may be carried on apparatus for the purpose attached to the bicycle or tricycle, and approved by the Chief Constable.

Bicyclists to Keep off 'Devil Strip.'

33. Bicyclists or tricyclists in meeting or passing, or on being overtaken by a street car, shall keep off the central portion of the roadway between the double tracks of the street railway, known as the 'devil strip.'

HORSES AND VEHICLES.

Drivers to Have Strong Reins.

34. No person shall drive any carriage, cart, wagon, sled, sleigh or sit upon any horse or other beast harnessed thereto in order to ride or drive the same, nor shall any person ride or lead any horse unless he shall have strong reins or lines, fastened to the bridles of the beasts, and held in his hands, sufficient to guide them, and to restrain them from running, galloping, or going immoderately through any of the streets.

Drivers not to Leave Vehicles.

35. The driver or other person in charge of any vehicle conveying goods, wares or merchandise

through the streets, shall remain upon such vehicle while it is in motion, or walk beside the horse drawing the same.

Leaving Certain Vehicles without Horses Forbidden.

36. No person shall place or leave any horse-drawn carriage, cart, wagon, sled or sleigh without horses upon any street.

Horses to be Weighted.

37. No person shall suffer or permit any horse to be at large or to stand in any street without being sufficiently secured to prevent its running away.

STREET CARS.

Street Cars not to be Obstructed.

38. No person shall obstruct or delay the operation of street cars owned by the Corporation.

Manner of Passing Standing Street Car.

39. When any vehicle meets or overtakes a street car or a car of an electric railway which is operated in or near the centre of the travelled portion of the highway which is stationary for the purpose of taking on or discharging passengers, the vehicle shall not pass the car or approach nearer than six feet measured back or forward from the rear or front end, as the case may be, of the car on the side on which passengers are getting on or off until such passengers have got on or got off safely to the side of the street, as the case may be.

HEAVY TRAFFIC.

Heavy Traffic on Certain Streets Prohibited.

40. Heavy traffic is hereby prohibited on, and no person shall be allowed to use the highway or portions of the highways hereinafter set out for the purpose of driving vehicles used for carrying heavy loads thereon, whether loaded or unloaded, except motor vehicles used for carrying passengers, and vehicles conveying building materials for use upon

lands abutting on the said highways or portions of highways. The following are the highways or portions of highways referred to:—

High Park Boulevard.

King Street, from Church to York Street.

Queen Street, from Victoria Street to York Street.

Park Drive Reservation.

The Rosedale Valley Road Drive.

University Avenue.

Yonge Street, from Melinda Street to Albert Street.

Queen's Park and Avenue Road to Bloor Street.

ADVERTISING WAGONS.

41. No advertising wagon shall be driven in the district bounded by Queen, Church, King and York Streets, including such streets.

ST. CLAIR AVENUE.

Traffic on St. Clair Avenue.

42. No person shall drive any horse or vehicle upon that part of St. Clair Avenue used for the track allowance of the Civic street car lines and as boulevard strips adjacent thereto, except at the crossings provided for such purpose.

ONE-WAY TRAFFIC.

43. No person shall drive a horse or vehicle upon the highways set out in the first column below except in the direction set out in the second column below.

Column One.	*Column Two.*
Victoria Street, from Colborne Street to Adelaide Street	From south to north.
Leader Lane	From north to south.
Colborne Street, between Yonge and Church Streets	From west to east.
Jordan Street	From north to south.
Berti Street	From south to north.

Column One.	*Column Two.*
The driveway on the east side of Queen's Park	From south to north.
The driveway on the west side of Queen's Park	From north to south.
Spadina Avenue on the east Crescent	From south to north.
Spadina Avenue on the west Crescent	From north to south.
The lane first east of Church Street running southerly from Front Street	From north to south.
The lane running easterly from Leader Lane, between Wellington Street and Colborne Street, thence northerly to Colborne Street	From Leader Lane to Colborne Street.
The lane first south of Front Street between Yonge Street and Scott Street	From Yonge Street to Scott Street.
The lane first north of Front Street from Church Street to West Market Street	From West Market Street to Church Street.
The lane first north of King Street running west from Yonge Street, thence northerly to Adelaide Street	From Yonge Street to Adelaide Street.

LOADS ON BRIDGES.

44. No vehicle shall cross any of the bridges set out below with any load in excess of the amount set forth below opposite the name of the said bridge, nor shall any vehicle cross any of the said bridges at a greater speed than that respectively set forth

opposite the name of each said bridge. The following are the bridges referred to:—

Bridge.	Load Tons.	Speed Miles per hour.
Dundas Street West (Highway)	8	10
Huntley Street	5	6
Moore Park (St. Clair Avenue)	4	6
North Glen Road	6	6
Old Fort Road	2	4
Roxborough Street	3	6
Shaw Street	2	4
Sherbourne Street	8	10
South Glen Road	6	6
Spadina Road	3	4
Summerhill Avenue	2	4
Winchester Street	2	4

BY-LAW TO BE SUBJECT TO CERTAIN STATUTES.

45. The provisions of this By-law shall be subject to the provisions of the Highway Travel Act, R. S. O. (1914), Chapter 206, and the Motor Vehicles Act, R. S. O. (1914), Chapter 207 and amendments thereto.

REPEAL OF BY-LAWS.

46. By-laws Nos. 4320, 4601, 5494, 5553, 6385, 6541, 6571, 6898, 7093, 7117, 7173, 7264, 7711, 7904, 7995 and 8118 are hereby repealed.

47. Any person convicted of a breach of any of the provisions of this By-law shall forfeit and pay, at the discretion of the convicting Magistrate, a penalty not exceeding (exclusive of costs) the sum of fifty dollars for each offence.

DATE OF COMING INTO FORCE.

48. This By-law shall come into force on the 1st day of September, 1920.

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